Institutions Of The Khilafah State

(In ruling and administration)

أجهزة دولة الخلافة

(في الحكم والإدارة)

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This book is a translation of the Arabic book 'Ajhiza dawlat al-Khilafah – fil hukm wal idara', written by Hizb ut-Tahrir. It was originally published by Dar al-Ummah, Beirut – Lebanon in 2005.

Translation of the Qur'an

It should be perfectly clear that the Qur'an is only authentic in its original language, Arabic. Since perfect translation of the Qur'an is impossible, we have used the translation of the meaning of the Qur'an throughout the book, as the result is only a crude meaning of the Arabic text.

Qur'anic verses appear in speech marks proceeded by a reference to the Surah and verse number. Sayings (Hadith) of Prophet Muhammad (saw) appear in **bold**.

(saw) - صلى الله عليه وسلم (Peace be upon him)
(swt) - سبحانه وتعالى
AH – After Hijra
CE – Christian Era

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بِسْمِ اللهِ الرَّحْمَنِ الرَحِيم

Foreword

Praise be to Allah, and prayers and peace be upon the Messenger of Allah, his household, his companions and those who followed his model.

Allah (swt) says:

﴿وَعَدَ اللَّهُ الَّذِينَ آمَنُوا مِنْكُمْ وَعَمِلُوا الصَّالِحَاتِ لَيَسْتَخْلِفَنَّهُم فِي الأَرْضِ كَمَا اسْتَخْلَفَ الَّذِينَ مِنْ قَبْلِهِمْ وَلَيُمَكِّنَنَّ لَهُمْ دِينَهُمُ الَّذِي ارْتَضَى لَهُمْ وَلَيُبَدِّلَنَّهُمْ مِنْ بَعْدِ خَوْفِهِمْ أَمْنًا يَعْبُدُونَنِي لاَ يُشْرِكُونَ بِي شَيْئًا وَمَنْ كَفَرَ بَعْدَ ذَلِكَ فَأُوْلَئِكَ هُمْ الْفَاسِقُونَ﴾

"Allah has promised, to those among you who believe and work righteous deeds, that He will, of a surety, grant them in the land, inheritance (of power), as He granted it to those before them; that He will establish in authority their religion, the one which He has chosen for them; and that He will change (their state), after the fear in which they (lived), to one of security and peace: `They will worship Me (alone) and not associate aught with Me.' If any do reject Faith after this, they are rebellious and wicked." [TMQ 24: 55].

The Messenger of Allah (saw) says:

«تكونُ النّبُوة فيكمّ ما شاءَ اللهُ أن تكون، ثمّ يرْفَعَها إذا شاءَ أن يرْفعُها. ثُمّ تكونُ خِلافةً على مِنهاج النبوَّة، فتكونُ ما شاءَ اللهُ أنْ تكونَ، ثُمّ يرْفعُها. إذا شاءَ الله أنْ يرفعَها. ثُمّ تكونُ مُلْكاً عاضّاً، فيكونُ ما شاءَ الله أنْ يكونَ، ثُمّ

يرفعُها إذا شاءَ أنْ يرفعَها، ثُمَّ تكونُ مُلْكاً جَبريَّةً، فتكونُ ما شاءَ اللهُ أنْ تكون، ثُمَّ يرفعُها إذا شاءَ أنْ يرفعَها. ثُمّ تكونُ خِلافةً على مِنهاج النُّبُوَّة، ثم سكت»

"The Prophethood will last among you till Allah wishes it to last, and then Allah will raise it up. Afterwards there will be a Khilafah according to the way of the prophethood so long as Allah wishes it to last, and then Allah will raise it up if He wished. Afterwards there will be an oppressive rule, and it will last so long as Allah wishes it to last, and then Allah will raise it up if He wished. Afterwards there will be a compulsory rule, and it will last as long as Allah wishes it to last, and then Allah will raise it up if He wished. Afterwards there will be a Khilafah according to the way of the Prophethood." [Ahmad]

We in Hizb ut-Tahrir believe in the good promise of Allah (swt), we believe in the good tidings the Messenger of Allah (saw) carried to us, and we work with and through the Islamic *ummah* to restore the Khilafah once again. We are confident of achieving that, and we ask Allah (swt) to honour us by establishing the Khilafah, and make us of its soldiers, where we raise its banner in glory and take it from victory to victory. Verily, for Allah (swt) that is not a hard matter.

We wished to include in this book the ruling and administrative organisations in the Khilafah state, presented in clear terms, easy to understand and practically implementable. More importantly, it is properly deduced such that it brings satisfaction to the heart and delight.

We were motivated to do this because of the fact that the present ruling systems in the world are a far cry from the ruling system in Islam in terms of the shape and structure. As regarding the structure, it is clear for the Muslims that all the existing systems are not derived from the book of Allah, the sunnah of His Messenger and sources alluded by them. They are rather systems that contradict the system of

Islam, and this is a matter which the Muslims are aware of, without difference amongst themselves.

What might create confusion among them is their perception that the shape of the ruling system in Islam in terms of its organisations does not differ from the existing ruling organisations. Therefore, they would not mind having a council of ministers, ministers and ministries and the like, with capacities and powers similar to that present in the existing ruling systems. So, we endeavoured in this book to concentrate on the ruling organisations in the Khilafah state, so as to make the shape of the ruling organisation comprehendible to the minds before it becomes a reality, inshallah (God willing).

We also included in it the flag and the banner of the Khilafah state. There are other necessary matters we did not include in the book, we rather left them to their right time, where due laws will be issued regarding them in an attachment to this book, inshallah. These matters are as follows:

The way of electing the Khaleefah, determining the wording of the bay'ah, determining the mandatory powers of the provisional Khaleefah in case the Khaleefah fell captive, whether there was or was not a chance for his rescue, organising the police of the wilayat (districts) in terms of execution and administration, appointing women police in the internal security department, the way of electing the councils of the wilayat as well as the council of the *ummah*, acceptance of an official anthem for the state. We have put light on these issues in their places in the book.

We ask Allah (swt) to hasten to us His victory, and bestow upon us His favour, and honour us with His support and kindness. So that the *ummah* would return as the best *ummah* brought forward to mankind; and the state would return the first state in the world, where it would spread out goodness in its regions and justice in its territories. At that point the believers would rejoice the victory from Allah, by which Allah would heal the breasts of the believers.

Our last prayer is celebrating the good praise to Allah, the Lord of the worlds.

Introduction

Before beginning to explain the details of the Khilafah state organisations, it is necessary to mention the following points:

1: The ruling system in Islam that the Lord of the worlds ordained is the Khilafah system, in which a Khaleefah is appointed by a bay'ah on the book of Allah and the sunnah of his prophet (saw) to rule by what Allah has revealed. And there are elaborate evidences for that from the Quran, the Sunnah and Ijma' As *sahabah*.

As regarding the book, Allah (swt) says addressing the prophet (saw):

﴿فَاحْكُمْ بَيْنَهُمْ بِمَا أَنزَلَ اللَّهُ وَلاَ تَتَّبِعْ أَهْوَاءَهُمْ عَمَّا جَاءَكَ مِنْ الْحَقِّ﴾

"So judge between them by that which Allah has revealed and follow not their desires away from the truth that has come to you.." [TMQ 5:48]

He also says:

﴿وَأَنْ احْكُمْ بَيْنَهُمْ بِمَا أَنزَلَ اللَّهُ وَلاَ تَتَّبِعْ أَهْوَاءَهُمْ وَاحْذَرْهُمْ أَنْ يَفْتِنُوكَ عَنْ بَعْضِ مَا أَنزَلَ اللَّهُ إِلَيْكَ﴾

"Judge between them by that which Allah has revealed and follow not their desires and beware of them lest they seduce you from some part of that which Allah has revealed to you.." [TMQ 5:49]

The speech of Allah (swt) to the Messenger (saw) regarding ruling among them with that which Allah revealed is a speech to his *ummah*. It means they have to appoint a ruler after the Messenger

of Allah (saw) who governs them with what Allah revealed. The command contained in the speech indicates decisiveness because the subject of the speech is an obligation (fard), a matter that indicates decisiveness according to the usool (foundations of jurisprudence). The ruler who rules amongst Muslims after the Messenger of Allah (saw), with that which Allah revealed is the Khaleefah. Accordingly, the ruling system is the Khilafah system. Furthermore, the execution of the legal punishments (hudood) and other rules (ahkam) is obligatory, which cannot be implemented except by a ruler. Since that which is necessary for implementing an obligation is itself obligatory, then appointing the ruler who establishes the divine law (*shar'*) is obligatory. The ruler in this form is the Khaleefah, and the system is the Khilafah system.

As regarding the sunnah, it was narrated from Nafi', he said: Abdullah ibn Umar said:

«من خلع يداً من طاعة لقي الله يوم القيامة لا حجة له، ومن مات وليس في عنقه بيعة مات ميتة جاهلية»

"I heard the Messenger of Allah (saw) say**: 'Whoever withdraws his hand from obedience (to the Ameer) will find no proof for himself when he meets Allah on the Day of Judgment, and whoever dies without having an oath of allegiance (Bay'ah) on his neck he would die the death of Jahiliyyah."'** [Muslim]

Thus the prophet (saw) obliged every Muslim to have a pledge of allegiance (bay'ah) on his neck. He describes the one who dies without having a bay'ah on his neck as dying a death of jahiliyyah (ignorance). The Bay'ah after the Messenger of Allah (saw) is only given to the Khaleefah. Thus the hadith obliges the presence of a bay'ah on the neck of every Muslim, i.e. the presence of a Khaleefah that it is entitled, by this presence, to a bay'ah in the neck of every Muslim.

Muslim narrated from Al-Araj from Abu Hurairah from the Prophet (saw), he said:

«إنما الإمام جُنة يُقاتَل من ورائه ويُتقى به»

"Indeed the *Imam* is a shield, from whose behind (one) would fight, and by whom one would protect oneself." [Muslim, Nasaai]

Muslim also reported on the authority of Abu Hazim that he said: I accompanied Abu Hurairah for five years, and heard him informing about the Prophet (saw), he said:

«كانت بنو إسرائيل تسوسهم الأنبياء، كلما هلك نبي خلفه نبي، وأنه لا نبي بعدي، وستكون خلفاء فتكثر، قالوا فما تأمرنا؟ قال: فُوا ببيعة الأول فالأول، وأعطوهم حقهم، فإن الله سائلهم عما استرعاهم»

"The Prophets ruled over the children of Israel, whenever a prophet died another Prophet succeeded him, but there will be no Prophet after me. There will soon be *Khulafa'a* and they will number many." They asked: 'what then do you order us?' He said: "Fulfill the Bay'ah to them, one after the other and give them their dues for Allah will verily account them about what he entrusted them with." [Bukhari, Muslim]

In these *Ahadith*, there is a description of the Khaleefah as being a shield, i.e. a protection. The description of the *Imam* as a shield is information that includes praise of the presence of the *Imam*, therefore it is a command. This is because when Allah (swt) or His Messenger (saw) informs us about something that includes a rebuke this is taken as a command of prohibition i.e. to abstain from it. When the text contains praise it is taken as a command to

perform an action; and if the commanded action is necessary to implement the divine rule, or if its neglect would cause the divine law to be abandoned, then this is decisive. These *Ahadith* also inform us that those who run the affairs of the Muslims are the *Khulafa'a*, which means a command of appointing them. Moreover, the Messenger of Allah (saw) ordered the Muslims to obey the *Khulafa'a* and to fight those who dispute with them regarding their authority, which means that it is an obligation to appoint a Khaleefah and protect his Khilafah by fighting those who dispute his authority. Muslim reported that the Messenger of Allah (saw) said:

«ومن بايع إماماً فأعطاه صفقة يده، وثمرة قلبه فليطعه إن استطاع.

فإن جاء آخر ينازعه، فاضربوا عنق الآخر»

"Whosoever gave a Bay'ah to an *Imam*, giving him the clasp of his hand, and the fruit of his heart shall obey him as long as he can, and if another comes to dispute with him, you must strike the neck of that man." [Muslim, Nasaai, Ibn Maja]

Therefore the command to obey the *Imam* is an order to appoint him. And the command to fight those who dispute with him is a collaborating evidence that the command of maintaining the presence of one Khaleefah, is decisive.

As for the *Ijma'* of the *Sahabah*, they (may Allah be pleased with them) agreed upon the necessity of establishing a successor (i.e. Khaleefah) to the Messenger of Allah (saw) after his death. They all agreed to appoint a successor to Abu Bakr, and upon his death, appointing 'Umar as successor and upon 'Uthman's death to appoint Ali as a successor to him. The general consensus of the *Sahabah* on the appointment of a Khaleefah manifested itself emphatically upon the death of the Messenger of Allah (saw) where they engaged themselves in appointing a successor to him

though it is known that the burial of the dead person after his death is obligatory. The *Sahabah* that were obliged to engage in preparing and the burial of the Messenger (saw), some of them engaged themselves in appointing a Khaleefah, instead of engaging themselves in preparing the burial of the Messenger of Allah (saw). Some *Sahabah* kept silent about this and participated in the delaying of the burial for two nights, despite having the ability to deny the delay and to bury the Messenger of Allah (saw).

The Messenger (saw) has passed away Monday, late morning; and he remained without burial Tuesday night and day, where Abu Bakr (ra) was given the bay'ah, and then the Messenger of Allah (saw) was buried on Wednesday night. This means the burial was delayed two nights, and Abu Bakr was given the bay'ah before the burial of the Messenger (saw). Therefore, this action of the *Sahabah* is an evidence of *Ijma'* of engaging in the appointment of the Khaleefah instead of the burial of the dead person.

This could not have been legitimate unless the appointment of a Khaleefah was more obligatory than the burial of the dead person. Furthermore, all the *Sahabah* consented throughout their lives, upon the obligation of appointing the Khaleefah. Although at some times they differed about the person who should be selected as a Khaleefah, they never disagreed about the fact that a Khaleefah must be appointed, whether in the wake of the death of the Messenger of Allah (saw) nor after the death of each of the *Khulafa'a 'Rashideen*.' Accordingly, the general consensus of the *Sahabah* (*Ijma'*) is both strong and clear evidence that the appointment of a Khaleefah is obligatory.

2: **The shape of ruling system in Islam (Khilafah) is distinguished from the well known forms in the world**, whether regarding its foundation, or the thoughts, concepts, criterion and rules by which it manages the affairs, or the constitution and laws it enacts for implementation and execution, or the pattern of the Islamic state, which is different from all the

ruling patterns in the entire world.

The shape of the Khilafah system is not monarchical: It neither approves of the monarchical shape of government nor does it resemble it, this is because in the monarchical system the son becomes a king by inheritance, without the *ummah* having anything to do with that. Whereas the bay'ah from the *ummah* is the method of appointing a Khaleefah. The monarchical system allows the monarch special privileges and rights exclusively to him, and puts him above the law and a symbol for the *ummah*; he owns but does not rule as is in some monarchical structures; or he owns and rules, and thus runs the country and the people as he wishes, as is in other monarchical structures, and he prevents any accountability to him regardless of his oppression and mistreatment.

The Khilafah system however does not assign to the Khaleefah any special privileges that put him above the citizens as it is the case in the monarchical system, and nor any rights that distinguish him in judiciary from any other citizen. Besides, he is not the symbol of the *Ummah* as mentioned in the monarchical system. He is rather a representative of the *Ummah* in ruling and power, where the *Ummah* selects him and gives him the pledge of allegiance willingly so as to implement on her the *Shar'a* of Allah (swt). He is restricted in all his actions, judgments and looking after the affairs of the *Ummah* and her interests by the divine rules.

The Shape of the Islamic Ruling System is not imperial, for the imperial system is absolutely inconsistent with the Islamic system. The regions ruled by Islam - though they are of various races and linked to one central place – they are not ruled by the imperial system rather by a system that contradicts the imperial system since the imperial system does not treat the races equally in ruling in the various regions of the empire, rather gives privileges, in ruling, finance and economy to the centre of the empire.

The Islamic way of ruling is to equate between the subjects in all the regions of the state. Islam rejects tribalism and grants non-muslims who hold citizenship, its full rights and duties in accordance with the divine rules. They enjoy the same fairness as Muslims and are subject to the same accountability like them. Furthermore, every single citizen, regardless of his or her creed, enjoys rights that Muslim non-citizen does not enjoy. With this equality, the Islamic system differs completely from the imperial one. It does not make the regions under its ruling into colonies, areas of exploitation, nor a source of wealth funneled back into the central region for its own benefit. It rather considers all the regions the same, no matter how far apart they were, and no matter how different their races were. It considers every single region as a part of the state and its citizens enjoy the same rights as those in the centre region or any other region. It also makes the ruling authority, its system and its legislation the same in all the regions.

The Khilafah system is not federal - where its regions separate by autonomy, but unite in the general ruling. It is rather a system of unity, where Marrakesh in the West is considered to be the same as Khurasan in the East and as the province of Al-Fayoom, if Cairo were the Islamic capital. The finance of all the regions will be the same, as will their budget. Funds are spent equally on the affairs of the subjects, regardless of their *Wilayah*. If for instance, the revenues in one *Wilayah* were double its expenditure, the funds spent will be to cover the *Wilayah's* needs and not according to the revenue generated. If another *Wilayah's* revenue fell short of its expenditure, this would not be taken into consideration, and funds will be spent to satisfy the *Wilayah's* needs from the general budget whether it raised enough taxes or not.

The Shape of the Khilafah system is not republican: This is because the republican system initially emerged as reaction to the tyranny of the monarchical system, where the king had sovereignty and authority by which he governed and managed the country and people as he wished. So he enacted laws as he liked. The Republic

system was introduced where sovereignty and authority were transferred to the people by what was called democracy. So, the people came to enact its laws, where it allows and forbids, praises and rebukes whatever it likes. Authority came into the hand of the republic's president and his ministers in the presidential republic system, and in the hands of the ministers cabinet in the parliamentary republic system (And similar is the ruling by the cabinet of ministers in the monarchical systems where the king is deprived of the ruling authority, where the king remains a symbol who owns but does not rule).

As for in Islam, the right of legislation is not for the people. Rather it is for Allah alone; and nobody other than Allah has the right of allow or forbid anything. Giving the right of legislation to people is a great crime in Islam. When the verse:

﴿ اتَّخَذُوا أَحْبَارَهُمْ وَرُهْبَانَهُمْ أَرْبَابًا مِنْ دُونِ اللَّهِ﴾

"*They have taken as lords beside Allah their rabbis and their monks*" [TMQ 9:31]

The Messenger (saw) explained it by the fact that the rabbis and monks used to legislate, where they allowed and forbade things for the people who would obey them. This was the meaning of taking them (the rabbis and monks) as lords beside Allah, as the Messenger of Allah (saw) explained this verse. This indicates the great crime for the one who allows and forbids things besides Allah (swt). Tirmidhi reported through Adiyy ibn Hatim, he said:

«أَتيت النبي صلى الله عليه وسلم وفي عنقي صليب من ذهب، فقال يا عدي اطرح عنك هذا الوثن. وسمعته يقرأ في سورة براءة [اتَّخَذُوا أَحْبَارَهُمْ

وَرُهْبَانَهُمْ أَرْبَابًا مِنْ دُونِ اللَّهِ] قال: أَمَا إنهم لم يكونوا إذا أحلوا لهم شيئاً استحلوه، وإذا حرّموا عليهم شيئاً حرّموه»

"I came to the prophet (saw) wearing a cross of gold in my neck. He said: O Adiyy, throw away this idol. And I heard him read from surah of Baraa'ah: *"They took the rabbis and monks as lords beside Allah".* He said: As regarding that they did not worship them, but they used when they allowed them something they took it and when they forbade them something they forbade". [Tirmidhi, Tabarani]

Moreover, ruling in Islam is not through a cabinet of ministers and ministers who have mandatory powers and separate budgets, which might increase or decrease from other. The surplus from one ministry budget is not transferred to the another ministry's budget except through many exhaustive measures that usually cause complications in managing the people's affairs due to the interference of many ministries in the same issue, instead of putting all the affairs of the people under one administrative structure. In the Republican system the ruling is divided between the ministries, where these ministries are combined in a cabinet that governs in a collective way. On the other hand, there is no cabinet of ministers in Islam that collectively holds the government authority as in the democratic form. Rather, the Khaleefah is pledged by the *ummah* so as to govern her by the book of Allah and the sunnah of His Messenger. The Khaleefah appoints delegated assistants who help him in carrying the burdens of the Khilafah. Thus, they are his assistants in the linguistic term, i.e. assistants to the Khaleefah in the issues delegated to them.

The Ruling system in Islam is not democratic in the true sense of democracy, in terms of giving the right of legislation to the people, where it allows and forbids things, as well as it praises and rebukes actions, and in terms of not committing to the divine rules under

the name of freedoms. The unbelievers realize that the Muslims will not accept democracy in its true meaning. Therefore, the colonial powers, particularly America tries to promote it in the Muslim lands, by introducing it through deception, where they claim that democracy is a means for electing the ruler. Thus, you see them tickle the sentiments of Muslims with it, focusing on the election of the ruler, so as to give a deceptive image to Muslims, as if the significant issue in democracy is the election of the ruler. Since Muslim lands are suffering from oppression, tyranny, suppression, silencing people from expressing themselves and dictatorship, whether under the monarchical or the republican systems; because of all this it was easy for the unbelievers to promote democracy in Muslim lands as being election of the rulers. They however dodged the vital issue of democracy, which is giving the right of legislation, and allowance and forbiddance for the people rather than their creator. Even, some Islamists including some of their sheikhs accepted that deception, whether with good or bad intentions. So, if you asked them about democracy they answered you by allowing it understanding it means the election of the ruler. Those with evil intentions when they answer, they go around in their answers avoiding its real meaning coined by its advocates, which means that sovereignty is for the people, where they legislate whatever they want by the opinion of the majority, thus they allow and forbid, praise and rebuke whatever they like. Besides, the individual in their view is free in his actions, where he does whatever he likes. Thus, he can drink alcohol, commit adultery, apostate, and revise and curse the sacred matters, all of which he commits under the name of the democracy and its freedoms. This is democracy, its reality, its understanding and its true meaning. How is it possible then for a Muslim who believes in Islam to say democracy is allowed, or that it is from Islam?

As regarding the election of the ruler by the *ummah*, i.e. the election of the Khaleefah, this is a stipulated matter in Islam. Sovereignty in Islam is for the *shar'* (divine laws), but the pledge by the *ummah* to

the Khaleefah is a fundamental condition for the appointment of a Khaleefah. The Khaleefah used to be elected in Islam at a time when the world lived in the darkness of dictatorship and the tyranny of the kings.

Whoever follows up the way of electing the guided Khulafa'a: Abu Bakr, Umar, Uthman and Ali (ra), would see clearly how the pledge was taken from the influential people within the *ummah* and from the representatives of the Muslims so that each one of them became a Khaleefah entitled for the obedience of Muslims. Abdur Rahman ibn Awf (ra), who was delegated to find out the opinion of the representatives of the Muslims (the people of the Madinah at that time), visited them asking this and that, and visiting this house and that. He enquired the men and the women to find out whom they selected from the candidates for Khilafah, till the opinion of the people finally settled on Uthman, and his pledge was then concluded.

In conclusion, democracy is a system of kufr. This is not because it advocates the election of the ruler, for this is not the fundamental issue. It is rather because the fundamental issue in democracy is giving the right of legislation to the people and not to the Lord of the worlds. Allah (swt) says:

﴿ إِنِ الْحُكْمُ إِلاَّ لِلَّهِ ﴾

"Indeed, ruling belongs to Allah". [TMQ 12:40]

﴿فَلاَ وَرَبِّكَ لاَ يُؤْمِنُونَ حَتَّى يُحَكِّمُوكَ فِيمَا شَجَرَ بَيْنَهُمْ ثُمَّ لاَ يَجِدُوا فِي أَنفُسِهِمْ حَرَجًا مِّمَّا قَضَيْتَ وَيُسَلِّمُوا تَسْلِيمًا﴾

"But no, by Your Lord, they can have no (real) faith until they make you judge in all disputes between them and find in their souls no resistance against your decisions, but accept them with the fullest submission." [TMQ 4:65]

There are many famous evidences that indicate legislation is to Allah alone.

Furthermore, democracy acknowledges personal liberties, where a man and woman can do whatever they like without any observation of halal and haram. Moreover, religious liberties allow apostasy and change of religion without any restriction. Ownership freedom allows the strong to misuse the weak, using any possible means, thus increasing the wealth of the rich and the impoverishing of the poor. As regards the freedom of expression, it is not in expressing the truth, rather in insulting the sanctities of the *ummah*, to the point they consider those who attack Islam under the name of the freedom of expression, they consider them men endowed with intelligent mind, and thus bestow rewards upon them bountifully.

Accordingly, the ruling system in Islam (the Khilafah) is not monarchical, and nor imperial, or federal, republican or democratic as we just explained.

3: The organisations of the Khilafah state differ from those known in the existing ruling systems, though they might be similar to them in some of its appearance. The organisations of the Khilafah state are derived from the organisations set up by the Messenger of Allah (saw) in al-Madinah al-Munawwarah after his emigration to it and after establishing the Islamic state in it, which the guided Khulafa'a followed after him.

By examining the relevant texts we find the organisations of the Khilafah state regarding ruling and administration as follows:

1. The Khaleefah

2. The delegated assistants
3. The executive assistants
4. The governors (Wali's)
5. The *Ameer* of Jihad
6. The internal security
7. The foreign affairs
8. The industry
9. The judiciary
10. The people's affairs
11. The bayt ul-mal (state treasury)
12. The media (I'laam)
13. The council of the *ummah*

We will explain these organisations and their evidences in the coming chapters. We ask Allah (swt) to honour us with His victory, and help us to establish the second Khilafah *rashidah*, thus bringing back the might of Islam and Muslims, and the humiliation of kufr and the unbelievers, and spreading goodness in the entire world.

﴿ إِنَّ اللَّهَ بَالِغُ أَمْرِهِ قَدْ جَعَلَ اللَّهُ لِكُلِّ شَيْءٍ قَدْرًا﴾

"Indeed Allah brings His Command to pass. Allah has set a measure fro all things." [TMQ 65: 3]

14th Dhul Hijjah 1425 H
24/01/2005

Organisations Of The Khilafah State

(In Ruling and Administration)

1. The Khaleefah

The Khaleefah is the man who represents the *Ummah* in the ruling and authority and in the implementation of the rules of the *Shar'* (Divine Laws). Islam has decreed that the ruling and authority belong to the *Ummah*. It is she who appoints someone who runs that on her behalf, and Allah (swt) has made it obligatory upon the *Ummah* to execute all of the rules of *Shar'*.

Since the Khaleefah is appointed by the Muslims, this makes him a representative of the *Ummah* in terms of ruling and authority and as well in the implementation of the rules of *Shar'*. Therefore, he does not become a Khaleefah unless the *Ummah* gives him the pledge of allegiance (Bay'ah). By giving her Bay'ah to him over Khilafah she effectively appoints him as her representative. The conclusion of the Khilafah to him by this Bay'ah, he is given the authority (*Sultan*) and thus the *Ummah* is obliged to obey him.

The man who rules the Muslims does not become Khaleefah unless the pledge of allegiance, i.e. the Bay'ah was given to him by the influential people (*Ahlul Hall Wal Aqd*) from amongst the *Ummah*, with choice and content. He should fulfil all the conditions required for concluding the Khilafah to him, and he should hasten after that in implementing the rules of *Shar'*.

The title

As for his title, it could be the Khaleefah, or the *Imam* or the *Ameer* of the believers. These titles have been narrated in sound Ahadith and in the *Ijma'* of the *Sahabah*. The '*Khulafa'a Al-Rashideen'* (first four *Khulafa'a*) have held such titles. Abu S'aid Al-Khudri reported that the Messenger of Allah (saw) said:

«إذا بُويع لخليفتين فاقتلوا الآخر منهما»

"**If the pledge of allegiance (Bay'ah) has been taken for two *Khulafa'a* kill the latter of them.**" [Muslim]

'Abdullah ibn 'Amru Ibnl 'A'as reported that he heard the Messenger of Allah (saw) say:

«...ومن بايع إماماً فأعطاه صفقة يده، وثمرة قلبه فليطعه... الحديث»

"**Whoever pledged allegiance to an *Imam* giving him the clasp of his hand and the fruit of his heart shall obey him as long as he can** ..." [Muslim]

Auf Ibn Malik reported: I heard the Messenger of Allah (saw) say:

«خيار أئمتكم الذين تحبونهم ويحبونكم، وتصلون عليهم ويصلون عليكم»

"**The best of your *Imams* are those whom you love and they love you and who pray for you and you pray for them** ..." [Muslim]

Thus, in this ahadith the title of the ruler that executes the divine rules in Islam is: the Khaleefah, or the Imam.

As for title "*Ameer al-Mu'mineen*", the most authentic reports that came regarding it is the hadith of Ibn Shihab az-Zuhri as reported by al-Hakim in al-Mustadrak, authenticated by az-Zahabi and reported by at-Tabarani, and al-Haythami said about its narrators they are the narrators of the sound hadith. Its words as it mentioned by al-Hakim are as follows: "Ibn Shihab narrated that Umar ibn Abdul Azeez asked Aba Bakr ibn Sulaiman ibn Abi

Hathma….It was written 1: From the Khaleefah of Abu Bakr, so who was the first to write from Ameer ul-Mu'mineen? He said: Ash-Shafaa' told me, and she was from the first women emigrants, that Umar ibn al-Khattab (ra) wrote to the governor of Iraq to send him two strong men so that he could ask them about Iraq and its people. He sent to him Labeed ibn Rabee'ah and Adiyy ibn Hatim. When they arrived to al-Madinah they camped their two camel rides in the courtyard of the mosque and entered in the mosque. They suddenly saw Amru ibn al-Aas, and said: O Amru acquire for us permission to see the Ameer ul-Mu'mineen! Amru said: By Allah, you called him by his right name. He is the ameer, and we are the believers (mu'mineen). Then Amru jumped and entered at Umar, Ameer ul-Mu'mineen and said: Assalamu Alayka ya Ameer ul-Mu'mineen (Peace be upon you O ameer of the believers). Umar said: What made you think of this name, O ibn al-Aas? Allah knows you have to justify that what you said. He said: Labeed ibn Rabee'ah and Adiyy ibn Hatim arrived and they camped their two camel rides in the courtyard of the mosque and came to me and said: O Amru acquire for us the permission to see the Ameer ul-Mu'mineen! By Allah they gave you the right name; we are the believers (mu'minoon) and you are our ameer. Since then, they started using this title in writing. Ash-Shafaa' was the grandmother of Abu Bakr ibn Sulaiman". Then they continued to call the Khulafa'a after him with this title at the time of the *sahabah* and those who came after them.

Conditions of the Khaleefah:

The Khaleefah must satisfy seven contractual conditions in order to qualify for the Khilafah post and for the legitimacy of the contracting Bay'ah for Khilafah. These seven conditions are the conditions of the contract. If even one condition is not completed the Khilafah contract would not have taken place.

The contracting conditions are:

1: The Khaleefah must be Muslim; the post of Khilafah is never allotted to the unbeliever, nor is it allowed to obey him. Because Allah (swt) says:

﴿وَلَنْ يَجْعَلَ اللَّهُ لِلْكَافِرِينَ عَلَى الْمُؤْمِنِينَ سَبِيلاً﴾

"And Allah will never (lan) give the unbelievers any way (of authority) against the believers."- [TMQ; 4:141]

Ruling is the strongest way for the ruler to be over the ruled, hence the term '*lan'* (never) means the categorical prohibition of the unbeliever (*Kafir*) from taking a post of authority over the Muslims, be it the Khilafah or any other post of authority. This in turn forbids the Muslims from accepting the *Kafir* to rule over them.

Besides, the Khaleefah is the person in authority and Allah (swt) has decreed that the person in charge of the affairs of the Muslims should be Muslim. Allah (swt) says:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُوْلِي الأَمْرِ مِنْكُمْ﴾

"O you who believe, obey Allah and obey the Messenger and those in authority (Ulil-Amr) from amongst you." - [TMQ; 4: 59]

He (swt) also says:

﴿وَإِذَا جَاءَهُمْ أَمْرٌ مِنَ الأَمْنِ أَوْ الْخَوْفِ أَذَاعُوا بِهِ وَلَوْ رَدُّوهُ إِلَى الرَّسُولِ وَإِلَى أُوْلِي الأَمْرِ مِنْهُمْ ﴾

" When there comes to them some matter touching public safety or fear they divulge it .If they had only referred it to the Messenger or to the people of authority (Ulil- Amr) from among them " - [TMQ; 4: 83]

The phrase "*Ulil-Amr*" has always been mentioned in connection with the Muslims, it has not been mentioned in any other context other than to indicate that the people concerned are Muslims. This proves that they must be Muslims. Since the Khaleefah is the person in authority and it is he who appoints people in positions of authority such as his assistants, *Walis* and '*Amils*, he himself must, therefore, be Muslim.

2: The Khaleefah must be male. It is forbidden for a female to be Khaleefah, i.e. the Khaleefah must be a man, not a woman. This is because Al-Bukhari said: When the Messenger of Allah heard that the people of Persia had appointed the daughter of Chosroes (Kisra), he said:

«لن يفلح قوم ولّوا أمرهم امرأة»

"People who appoint (*Wallaow*) a woman as their leader will never succeed." [Bukhari]

The fact that the Messenger of Allah (saw) foretold the failure to those who assign the running of their affairs to a woman this indicates forbiddance of appointing her. The fact that this came in the form of request, which came in the form of reproaching those who appoint a woman to run their affairs by denying them success, this is a connotation (*Qareenah*) which indicates decisiveness. Thus, the forbiddance of appointing a woman as a ruler came here linked with a connotation that indicates that the forbiddance is decisive, so the appointment of the woman as Wali Amr is haram. This means holding the post of ruling, whether it is Khilafah or any other ruling posts. This is because the subject of the Hadith is the appointment of the daughter of Chosroes as a queen, so it is related to the issue of ruling that came in the hadith, and not specific to the appointment of Chosroes's daughter as queen. The *Hadith* is not also general to cover everything, so it does not include judiciary, shura council, accounting the rulers nor the election of the ruler. Rather, all of this is allowed for the woman as

it will be explained later on.

3: The Khaleefah must be mature; it is forbidden to appoint a youth (pre-pubescent). Abu Dawud narrated from 'Ali Ibn Abi Talib that the Messenger of Allah (saw) said:

«رُفع القلم عن ثلاثة: عن الصبي حتى يبلغ وعت النائم حتى يستيقظ، وعن المعتوه حتى يبرأ»

"**Accountability is lifted off three persons: The dormant until he awakes, the boy (adolescent) until he reaches maturity and the deranged until he regains his mind**."

«رفع القلم عن ثلاثة: عن المجنون المغلوب على عقله حتى يفيق، وعن النائم حتى يستيقظ، وعن الصبي حتى يحتلم»

In another narration from 'Ali: **"The pen has been lifted off three persons: The deranged in his mind till he restores his mind, the dormant till he wakes up and the adolescent till he reaches maturity."** [Abu Dawud]

Therefore, the person from whom the pen is raised is not able to be responsible for himself, and he is not under any liability by *Shar'*, so it is unlawful for him to become Khaleefah or to hold any post of authority for he is not responsible for his own actions. Evidence is also derived from what Al-Bukhari narrated from "Abi Aqeel, Zahra ibn Ma'abed from his grandfather Abdullah Ibn Hisham who reached the time of the Prophet (saw) and his mother Zainab ibnt Humair took him to the Messenger of Allah (saw) and said: 'O Messenger of Allah! Take his Bay'ah'. The Prophet (saw):

«هو صغير فمسح رأسه ودعا له ...»

"He is still a little boy', so he stroked his head and prayed for him." [Bukhari, Ahmad]

Therefore, if the Bay'ah of the little boy is not valid, and he cannot give a Bay'ah to a Khaleefah, he evidently cannot be Khaleefah himself.

4: The Khaleefah must be sane; it is unlawful for a Khaleefah to be insane, because the Messenger of Allah (saw) said:

«رُفع القلم عن ثلاثة»

"**The pen has been lifted off three persons**" [Abu Dawud, Tirmidhi, Ahmad].

He mentioned of these:

«المجنون لمغلوب على عقله حتى يفيق»

"The deranged in his mind till he restores his mind." [Abu Dawud]

The person off whom the pen is raised is not liable; this is because the mind is the condition for responsibility and for the validity of actions. The Khaleefah enacts the rules and executes all the legal duties, it is therefore unlawful to have an insane Khaleefah because it is not possible for the insane to look after his own affairs, and by greater reason therefore it is invalid for him to look after the affairs of the people.

5: The Khaleefah must be just (*'Adl*); it would not be right for him to be a '*Fasiq*' (unreliable). Integrity is an obligatory condition for contracting the Khilafah and for its continuity. This is because Allah (swt) has stipulated that the witness must be just .He (swt)

says:

﴿وَأَشْهِدُوا ذَوَيْ عَدْلٍ مِنْكُمْ﴾

"And seek the witness of two just men from amongst you" [TMQ:65: 2]

So if the witness must be just, then the Khaleefah who holds a higher post and rules over the witness himself should, by greater reason, be just. For if justice was stipulated in the witness, its presence in the Khaleefah must exist by greater reason.

6: The Khaleefah must be a freeman; since the slave is under his master's authority, he cannot run his own affairs, therefore by greater reason he has no authority to run the people's affairs and be a ruler over them.

7: The Khaleefah must be able to carry out the responsibilities of the Khilafah; this is because this is an integral part of the Bay'ah. One who is unable to do so cannot perform the duty of running the people's affairs by the Book and the *Sunnah* upon which he took the pledge of allegiance (Bay'ah).The Court of unjust acts has the mandatory powers to determine the types of the inability which the Khaleefah must not suffer of so as to be considered among those capable of carrying out the responsibilities of the Khilafah.

The Conditions of Preference

The aforementioned are the contractual conditions necessary for the Khaleefah to be appointed. Any other condition, apart from the seven mentioned above, does not constitute a necessary prerequisite for contracting the Khilafah. Such conditions however, constitute conditions of preference if the texts relating to them are confirmed, or if they are listed under a rule that has been confirmed by a sound (*Sahih*) text. This is because for the condition, to be a contractual one it should have evidence which

includes a decisive command to indicate that it is obligatory. If the evidence does not include a decisive command then the condition becomes a condition of preference. No evidence containing a decisive command has been found except for those seven conditions; therefore they alone constitute the contractual conditions. As for the other conditions, whereby a rule has been confirmed as sound, these would constitute conditions of preference only, Similar to the stipulation that the Khaleefah should be from Quraysh, a *Mujtahid* or skillful in using weapons or the like, which have no decisive evidence.

The Method of Appointing the Khaleefah

When the *shar'* made it incumbent upon the *ummah* to appoint a khaleefah on her, it determined for her the method by which the Khaleefah is appointed. This method is proved in the Quran and the *Sunnah* of his messenger (saw). The Muslims concerned with this bay'ah are the Muslims who are the citizens of the past khaleefah in case there was a Khilafah. Otherwise they are the Muslims of the country in which the Khilafah is established in case there was no Khilafah.

The fact that this method is the Bay'ah, is proved from the Bay'ah of the Muslims to the Prophet (saw), and from the order of the Messenger to us to pledge Bay'ah to the *Imam*. However, the Bay'ah of Muslims to the Messenger (saw) was not a Bay'ah on Prophethood, but a Bay'ah over ruling, since it was regarding action not belief. Therefore, Rasulullah (saw) was pledged allegiance as a ruler, and not as a Prophet or a Messenger. This is because acknowledging the Prophethood and Messengership is belief (Iman), and not a Bay'ah, so the Bay'ah to him (saw) was only in his capacity as the head of the state.

The Bay'ah was mentioned in the *Qur'an* and *Hadith*. Allah (swt) says:

﴿يَا أَيُّهَا النَّبِيُّ إِذَا جَاءَكَ الْمُؤْمِنَاتُ يُبَايِعْنَكَ عَلَى أَنْ لاَ يُشْرِكْنَ بِاللَّهِ شَيْئًا وَلاَ يَسْرِقْنَ وَلاَ يَزْنِينَ وَلاَ يَقْتُلْنَ أَوْلاَدَهُنَّ وَلاَ يَأْتِينَ بِبُهْتَانٍ يَفْتَرِينَهُ بَيْنَ أَيْدِيهِنَّ وَأَرْجُلِهِنَّ وَلاَ يَعْصِينَكَ فِي مَعْرُوفٍ فَبَايِعْهُنَّ﴾

"*O Prophet! If the believers come to you to take the oath (Bay'ah) that they will not associate (in worship) anything whatever with Allah, that they will not steal, that they will not commit adultery, that they will not kill their children, that they will not utter slander, intentionally forging falsehood, and they will not disobey you in any just matter (Ma'roof), then receive their oath (Bay'ah).***"** [TMQ:60: 12]

In another verse Allah (swt) says:

﴿إِنَّ الَّذِينَ يُبَايِعُونَكَ إِنَّمَا يُبَايِعُونَ اللَّهَ يَدُ اللَّهِ فَوْقَ أَيْدِيهِمْ﴾

"Verily those who pledge their allegiance to you do no less than pledge their allegiance to Allah: The Hand of Allah is over their hands." [TMQ:48: 10]

Al-Bukhari narrated: 'Ismail told us, Malik told on the authority of Yahya ibn Sa'eed who said: Ubadah ibn Alwaleed told me, that my father told me on the authority of Ubadah ibn-us-Samit who said:

«بايعْنا رسولَ الله ﷺ على السمع والطاعة في المنشط والمكره، وأن لا ننازع الأمر أهله، وأن نقوم أو نقول بالحق حيثما كنا، لا نخاف في الله لومة لائم»

"We have pledged allegiance to the Messenger of Allah to listen and obey in ease and in hardship and that we do not dispute the matter (authority) with its people and that we stand for or speak the truth wherever we were and that in the

service of Allah we would fear the blame of no one." [Bukhari]

In Muslim, from Abdullah ibn Amru ibn al-Ass that the Messenger of Allah (saw) said:

« ...ومن بايع إماماً فأعطاه صفقة يده، وثمرة قلبه فليطعه إنِ استطاع، فإن جاء آخر ينازعه فاضربوا عنق الآخر»

"Whosoever pledges allegiance to an *Imam* by giving him the clasp of his hand, let him obey him if he is able to do so, but if another comes along to dispute with him, then kill the other." [Muslim]

Also in Muslim, Abu Saeed Al-Khudri said: The Messenger of Allah (saw) said:

«إذا بويع لخليفتين فاقتلوا الآخر منهما»

"If two *Khulafa'a* were pledged allegiance, then kill the latter of them." [Muslim]

Muslim narrated on the authority of Abi Hazim who said: I accompanied Abu Hurairah five years and I heard him talk from the Prophet (saw), he said**:**

«كانت بنو إسرائيل تسوسهم الأنبياء، كلما هلك نبي، خلفه نبي، وإنه لا نبي بعدي، وستكون خلفاء فتثكثر، قالوا فما تأمرنا؟ قال: فُوا ببيعة الأول فالأول، وأعطوهم حقهم، فإن الله سائلهم عما استرعاهم»

"Banu Israel used to be governed by Prophets, every time a Prophet died, another came after him, and there is not

Prophet after me. There will be *Khulafa'a* and they will number many". They said: "What would you order us to do?" He (saw) said: "Fulfill the Bay'ah to them one after the other, and give them their due right, surely Allah will account them for that which He entrusted them with". [Bukhari & Muslim]

These texts are explicit in the Quran and *Sunnah*, that the method of appointing a Khaleefah is by the Bay'ah. This was understood and practiced by all of the *Sahabah*. The bay'ah of the guided Khulafa'a was clear in that regard.

The practical measures used to appoint and give Bay'ah to the Khaleefah

The practical procedures of appointing the Khaleefah before the bay'ah is given to him can take different forms, as it happened with the guided Khulafa'a who came immediately after the death of the Messenger (saw), namely: Abu Bakr, Umar, Uthman, and 'Ali may Allah (swt) be pleased with them. All of the *Sahabah* remained silent about this and vouched for it, otherwise, none would have accepted it if it was against the *Shar'*. This is because it is related to a vital matter upon which rely's the stature of the Muslims and the preservation of the rule by Islam. If we follow the development of the appointment of those *Khulafa'a*, we find that some Muslims had discussions in the hall *(Saqeefah)* of Banu Saidah, and those nominated were Sa'ad, Abu Ubaydah, Umar and Abu Bakr. However, Umar and Abu Ubaidah did not accept to challenge Abu Bakr. This meant that the issue was then confined to Abu Bakr and Sa'ad only and as a result of the debate, the Bay'ah was given to Abu Bakr. The next day the Muslims were called to the *Masjid* and they in turn pledged their Bay'ah. So the Bay'ah of the *Saqeefah* was a Bay'ah of appointment, by which he became Khaleefah for the Muslims. However, the second Bay'ah in the *Masjid* on the next day was a Bay'ah of obedience. When Abu Bakr felt that his illness was terminal, and since the Muslim

armies were fighting the superpowers at that time, the Persians and Romans, he invited the Muslims and consulted them with regards to who could be the Khaleefah for the Muslims after him. He continued in making these consultations for three months. When they were complete and he knew the opinion of the majority of the Muslims, he announced to them, i.e. nominated, according to the language of this century, that Umar would be the Khaleefah to succeed him. This delegation or nomination was not considered a contract of Khilafah to Umar after him. This is because after the death of Abu Bakr the Muslims came to the *Masjid* and pledged their allegiance to Umar for Khilafah. So with this Bay'ah Umar became the Khaleefah for the Muslims, and not with the consultations, nor with the delegation of Abu Bakr. Had the nomination of Umar by Abu Bakr been a contract of Khilafah to him, then he would not have needed the bay'ah of Muslims. Besides, the mentioned texts indicate explicitly that no one can become a Khaleefah except with the bay'ah from Muslims. When Umar was stabbed, the Muslims asked him to nominate a Khaleefah, but he refused. They insisted so he confined it to six people, i.e. he nominated six for them. Then he appointed Suhaib to lead the prayer and to watch over those nominated so as to select the Khaleefah from amongst them within the three days fixed for them by Umar. He said to Suhaib:

«... فإن اجتمع خمسة، ورضوا رجلاً، وأبى واحد، فاشدخ رأسه بالسيف... »

"…. If five agreed and accepted one man, while one man rejected, then hit his head with the sword…."

As reported by Tabari in his book of history, and by Ibn Qutaibah the author of the book 'al-Imamah and Siyasah' known as the book of the Khulafa'a, and Ibn Sa'ad in his book 'at-Tabaqat al-Kubra'. He then appointed Abu Talha Al-Ansari to protect the gathering with fifty men and he charged Al-Miqdad bin al-Aswad with the duty of choosing the meeting place for the six. After his

death (ra), the nominees settled in their meeting, Abdur Rahman ibn Awf said: "Who would take himself out of it (the Khilafah) and give it to the best among you? But no one answered him, so he went on saying: I myself renounce my right to the Khilafah. Then he started to consult them one by one. He would ask them: "Apart from yourself, who do you think is worthy of this authority from among this group?" Their answer was confined to two: Ali and Uthman. Then Abdul-Rahman sought the opinion of the Muslims regarding the two people, whom they want for them. He would ask the men and women, and enquire about the opinion of the people. He (ra) did not work at day only, but at night as well. Al-Bukhari reported from Al-Miswar ibn Makhramah, he said: "Abdur Rahman knocked at my door after a part of the night passed till I woke up. He said, I see you have been sleeping. By Allah, I did not enjoy much sleep in these three", meaning the three nights. Once the people prayed the fajr, the bay'ah was concluded to Uthman, so he became Khaleefah by the bay'ah of the Muslims, not by Umar delegating it to six people. Then Uthman was murdered, so the Muslim masses of al-Madinah and al-Kufah gave the bay'ah to Ali ibn Abi Talib, so he became the Khaleefah by the bay'ah of the Muslims.

Upon close examination regarding the method of their (ra) bay'ah it is clear that the nominees to the Khilafah were announced to the people, besides each one of them fulfilled the contracting conditions. Then the opinion of the influential people among Muslims was sought, who represented the *ummah*. The representatives of the *ummah* were known at the time of Khulafa'a *Rashidoon*, for they were the *sahabah* (ra), or the people of al-Madinah. Whoever was accepted by the *sahabah* or their majority was given the contracting bay'ah, and became a Khaleefah, and the obedience of the Muslims became his due right upon them. Muslims would then give him the bay'ah of obedience, and the Khaleefah would thus exist, and become the representative of the *ummah* regarding ruling and authority.

This is understood from the bay'ah given to the Khulafa'a *Rashidoon* (ra). There are two other issues that are understood from Umar's nomination of six people and from the measures followed in the bay'ah of Uthman (ra). These two issues are; firstly the presence of a provisional ameer who takes care of the period during which the new Khaleefah is appointed, and secondly limiting the nominees to six people as a maximum.

The provisional Ameer

The Khaleefah is entitled, once he feels death is approaching him, and a suitable period before the Khilafah post becomes vacant, to appoint a provisional ameer for looking after the affairs of the Muslims during the stage of appointing the new Khaleefah. Where, he exercises his duty after the death of the Khaleefah. His main responsibilities would be carrying out the appointment of the new Khaleefah within three days.

The provisional Khaleefah is not entitled in adopting (new) laws. This is because it is from the mandatory powers of the Khaleefah that is pledged by the *ummah*. Also He is not allowed to nominate himself for the Khilafah post, nor support any one of them. This is because Umar appointed such a provisional ameer from other than those he nominated for Khilafah.

The authority of such a provisional ameer would expire at the time the new Khaleefah is appointed, because his responsibilities are temporary and limited to this mission.

The evidence that Suhaib was a provisional ameer appointed by Umar (ra) is the following:

It is the saying of Umar (ra) to the six nominees:

«وليصلِّ بكم صهيب هذه الأيام الثلاثة التي تتشاورون فيها»

"Let Suhaib lead you in the prayer during these three days in which you consult".

Then he said to Suhaib:

«صل بالناس ثلاثة أيام، إلى أن قال: فإن اجتمع خمسة، ورضوا رجلاً، وأبى واحد، فاشدخ رأسه بالسيف...»

"Lead the people in the prayer during these three days, till he said: If five met together and agreed upon one man, and one (of the six) objected, then strike his head with the sword…"

This indicates Suhaib was appointed as an ameer over them. He was appointed an ameer over prayer, where leadership over prayer used to mean leadership over people. Moreover, he gave him the authority of executing the punishment (strike his head), where only the ameer performs killing.

This matter was conducted before a group of the *sahabah*, without anyone of them objecting to that. Thus, this constitutes *ijma'* that the Khaleefah is entitled to appoint a provisional ameer who looks after the course of appointing the new Khaleefah. Based on this, the Khaleefah is allowed during his life to adopt a clause in the constitution that stipulates in case the Khaleefah passed away without appointing a provisional ameer to supervise the measures of appointing the new Khaleefah, then somebody has to be appointed as a provisional ameer.

We accordingly adopt here that in case the Khaleefah did not appoint a provisional ameer during his terminal illness, then the eldest delegate assistant would be the ameer, unless he was nominated. In that case the next younger delegate assistant would be the ameer. This goes on followed, if necessary, by the executive assistants in the same way.

This appointment applies in case the Khaleefah was removed from his post. The provisional ameer would be the eldest delegate assistant in case he was not from the nominees. If he was from them, then the next younger one would be the ameer, till the end of these assistants. Later on it would be the eldest executive assistant, and so on as before. If all of them, however wanted to nominate themselves then the youngest executive assistant would be obliged to be the provisional ameer. This also applies in case the Khaleefah falls prisoner of a war. In this case there should be some details regarding the mandatory powers of the provisional ameer when there is or there is no chance of rescuing him. A bill will be issued on time regarding such mandatory powers.

This provisional ameer is different to the one whom the Khaleefah appoints as his deputy when he goes out for Jihad or in travel. This is like what the Messenger of Allah (saw) used to do when he went out in Jihad or he went out on Hijjat al-Wadaa' or the like. Such deputy would have the mandatory powers assigned to him by the Khaleefah regarding looking after the affairs required by such appointment.

Shortlisting of the Nominees

From examining the way of appointing the Khulafa'a *Rashidoon*, it is clear there was listing to the nominees. In the hall of Bani Saa'idah, the nominees were Abu Bakr, Umar, Abu Ubaidah and Sa'ad ibn Ubadah. These were enough at the time; but Umar and Abu Ubaidah did not consider anybody equal to Abu Bakr, so they did not challenge him. Thus competition was practically limited to Abu bakr and Sa'ad ibn Ubadah. Then the influential people present in the hall elected Abu Bakr and gave him the contracting bay'ah. The following day, Muslims gave Abu Bakr the bay'ah of obedience.

Abu Bakr nominated Umar to the Muslims for Khilafah, without having any other nominee. The Muslims gave him the contracting bay'ah, and then the bay'ah of obedience.

Umar nominated to the Muslims six people and limited Khilafah to them, to elect a Khaleefah from amongst themselves. Then Abdur Rahman discussed with the remaining five, thus limiting the nominees to two: Ali and Uthman, after they delegated the matter to him. After that he examined the opinion of the people, and found that the opinion settled on Uthman as a Khaleefah.

As regarding Ali, there was no other nominee for Khilafah besides him, so the majority of Muslims of al-Madinah and al-Kufah gave him the bay'ah, and he thus became the fourth Khaleefah.

Since the bay'ah of Uthman (ra) included the maximum period allowed for electing a Khaleefah, i.e. three days including their two nights. It also limited the nominees in six people, two of whom remained at the end; therefore we are going to mention it with some detail due its value in relation to the subject we want to discuss:

1- Umar (ra) passed away on Sunday morning, at beginning of Muharram in 24 H due to his stab by Abu Lu'lu'ah, may Allah curse him. Umar (ra) was at that time standing in the mihrab praying on the dawn of Wednesday, 4 days before the end of Dhul Hijjah 23 H. Suhaib (ra) prayed janazah on him according to the will of Umar (ra).
2- When Umar was buried, Al-Miqdad gathered the six people of shura recommended by Umar in a house. Abu Talha went on guarding them. So, they sat down consulting with each other. Then they delegated to Abdur Rahman ibn Awf to choose a Khaleefah from them, with their consent.
3- Abdur Rahman started discussion with them, and asked each one of them: "Apart from yourself, who do you think is worthy of this authority from among this group?" Their

answer was not beyond Ali and Uthman. Finally, Abdur Rahman confined the matter into two out of the six.

4- After that Abdur Rahman started consulting the people as it was mentioned above.

5- On Wednesday night, i.e. the night of the third day after the death of Umar (ra) (Sunday), Abdur Rahman went to the house of his nephew, Al-Musawwar ibn Makhramah, where Ibn Kathir reports the following in his book Al-Bidayah Wan-Nihayah:

(فلما كانت الليلة التي يسفر صباحها عن اليوم الرابع من موت عمر، جاء إلى منزل ابن أخته المسور بن مخرمة فقال: أنائم يا مسور؟ والله لَم أغتمض بكثير نوم منذ ثلاث...)

(When the night that begins the fourth day after the death of Umar started, he came to the house of his nephew, Al-Musawwar ibn Makhramah and said: Are you sleeping, O Musawwar? By Allah! I have not enjoyed much sleep since three…) i.e. the three nights after the death of Umar on Sunday morning, meaning the nights of Monday, Tuesday and Wednesday. He continued to say:

(إذهب فادع إليَّ علياً وعثمان... ثم خرج بهما إلى المسجد... ونودي في الناس عامةً: الصلاة جامعة...)

(Go and call for me Ali and Uthman….then he brought them to the mosque…and the people were called to attend a public prayer…)

This was at the dawn of Wednesday. Then he held the hand of Ali (ra) and asked him about taking the bay'ah over the book of Allah and the Sunnah of His Messenger and the action of Abu Bakr and Umar. Ali (ra) gave him the well known answer: Over the book and the sunnah, yes (I take); as for the action of Abu Bakr and

Umar, he would make his own ijtihad. So, he dropped his hand and held the hand of Uthman and asked him the same question. Uthman said: Yes, by Allah. Thus the bay'ah was concluded to Uthman (ra).

Suhaib led the people in the fajr and zuhr prayers of that day. Then Uthman (ra) led the people in the asr prayer as a Khaleefah for Muslims. This means that despite the contracting bay'ah to Uthman (ra) started at fajr prayer, the leadership of Suhaib did not expire except after the bay'ah of the influential people in al-Madinah to Uthman. This was completed little before asr, where the *sahabah* summoned each other to give bay'ah to Uthman until after the mid of that day and before asr. This was completed before asr, so the leadership of Suhaib ended, and Uthman led the people in the asr prayer as their Khaleefah.

The author of al-Bidayah and al-Nihayah explains why Suhaib led the people in the zuhr prayer though Uthman took the bay'ah at fajr, and says:

(... بايعه الناس في المسجد، ثم ذُهِبَ به إلى دار الشورى «أي البيت الذي اجتمع فيه أهل الشورى» فبايعه بقية الناس، وكأنه لَمَ يُتم البيعة إلا بعد الظهر، وصلى صهيب يومئذٍ الظهر في المسجد النبوي، وكان أول صلاة صلاها الخليفة أمير المؤمنين عثمان بالمسلمين هي صلاة العصر...)

(The people gave him the bay'ah in the mosque, then he was taken to the house of shura "i.e. the house where the people of shura met", so the rest of the people gave him the bay'ah. It seems he did not finish of taking the bay'ah except after zuhr. So, Suhaib prayed that zuhr in the Prophet's mosque, thus the first prayer in which the Khaleefah, ameer ul-mu'mineen, Uthman led the Muslims was salat al-asr.)

(هناك اختلاف حول يوم طعن عمر ووفاته وبيعة عثمان... ولكننا ذكرنا الراجح منها).

(There is difference about the day in which Umar was stabbed, the day of his death and the day of bay'ah to Uthman. However we mentioned the one with the strongest evidence).

Therefore, the following matters must be considered when making nominations for the post of Khilafah after it becomes vacant (by the death of the Khaleefah or his dismissal…), which are:

1- Work has to be day and night regarding the nomination, through out the days limit.
2- Nominees have to be short listed in terms of fulfilling the contracting conditions, a matter that is decided by Mahkamat al-mazalim (Court of unjust acts).
3- Nominees are short listed twice: the first one is with six, and the other is with two. The council of the *ummah* conducts that as representatives to the *ummah*. This is because the *ummah* delegated that to Umar, who made them six, and the six delegated that to one of them, Abdul Rahman, who made it two after discussion. Thus, the reference in all of this is the *ummah*, i.e. its representatives.
4- The responsibility of the provisional ameer expires by the completion of the measures of the bay'ah and the appointment of the Khaleefah, rather than by the announcement of the results. The leadership of Suhaib did not end by the election of Uthman (ra), rather by the completion of his bay'ah.

   Accordingly, a law will be issued that determines the way of electing the Khaleefah during the three days including their nights. This law has already been enacted, and it will be discussed and adopted on the right time, inshallah.

   This is the case if there was a Khaleefah and he passed away or

> was removed, and a Khaleefah needs to be appointed to replace him. However, in case there was no Khaleefah at all, and it became obligatory upon Muslims to appoint a Khaleefah for them, to implement the rules of *shar'* and to carry out the Islamic da'wa to the world, as it is the case nowadays since the destruction of the Islamic Khilafah in Istanbul, on 28th Rajab 1342 H, 3 March 1924. In this situation, each of the Muslim countries in the Islamic world is suitable to appoint a Khaleefah, and the Khilafah would be concluded by it. So, if one of the Muslim countries gave bay'ah to a Khaleefah, and the Khilafah was concluded to him, it becomes obligatory upon Muslims in the other countries to give him the bay'ah of obedience, i.e. a bay'ah of submission to his authority. This is after the Khilafah has been concluded to him through the bay'ah of the people of his country.

However, the following conditions have to be fulfilled in that country:

1. The authority of the country must be in the hands of the Muslims and not in the hands of a non-Islamic country or under a non-Islamic influence.

2. The security of the Muslims in that country must be guaranteed by Islam, i.e. its protection at home and abroad should be in the name of Islam and by Islamic forces to the exclusion of all others.

3. The implementation of Islam should take place with immediate effect in a comprehensive and radical manner; the Khaleefah should be involved in the conveying of the Islamic Message.

4. The Khaleefah must fulfill all the contractual conditions; although he might not fulfill the conditions of preference, since what really matters are the conditions of the contract.

Should that land satisfy these four conditions then the Khilafah

would be established by the bay'ah of that land alone, and the Khilafah would be concluded by it alone. The Khaleefah to whom they gave the right bay'ah would become the legitimate Khaleefah, and any bay'ah to other than him would be invalid.

Any land that might give bay'ah to another Khaleefah after that, its bay'ah would be invalid, due to the saying of the Messenger of Allah (saw):

«إذا بويع لخليفتين فاقتلوا الآخر منهما»

"If bay'ah was taken to two Khaleefah, then kill the latter of them." [Muslim]

«... فوا ببيعة الأول فالأول»

"Fulfill the bay'ah of the first, then the first." [Bukhari]

«من بايع إماماً، فأعطاه صفقة يده، وثمرة قلبه، فليطعه إن استطاع، فإذا جاء آخر ينازعه فاضربوا عنق الآخر»

"Whoever gave bay'ah to an imam, giving him the clasp of his hand and the fruit of heart, let him obey him as much as he could. If anybody else came to challenge his authority, then strike the head of the latter." [Abu Dawud, Ahmad]

The method of the Bay'ah

We have explained previously the evidences of the bay'ah, and the method prescribed by Islam to appoint the Khaleefah. As regarding to how it is given, it is by shaking the hand, as well as by writing. It has been narrated by Abdullah ibn Dinar, he said: "I

witnessed Ibn Umar when people agreed on Abdul Malik ibn Marwan saying:

«كتب أني أقر بالسمع والطاعة لعبد الله عبد الملك أمير المؤمنين على كتاب الله وسنة رسوله ما استطعت»

"I write herewith that I agree to hear and obey Abdullah Abdul Malik, the Ameer of believers, according to the Book of Allah and the Sunnah of His Messenger, and to the best of my ability."

The bay'ah can also be given by any other means. However, the bay'ah should only be given by an adult, as the bay'ah of the minor is not valid. Abu Aqeel Zahrah Ibn Ma'abad reported on the authority of his grandfather Abdullah Ibn Hisham who lived during the time of the Messenger of Allah (saw), that his mother Zainab Ibnatu Hamid took him to the Messenger of Allah (saw) and said: **"O Messenger of Allah, take bay'ah from him;**" upon this the Messenger of Allah (saw) said:

«هو صغير. فمسح رأسه ودعا له»

"He is young & he wiped over his head and made dua for him" [Bukhari, Ahmad, Bayhaqi]

He (saw) wiped over his head and prayed for him, as narrated by al-Bukhari.

As for the wording of the bay'ah, it is not restricted to any specific wording, but it should include the commitment that the Khaleefah acts according to the Book of Allah and the Sunnah of His Messenger; and that the person who gives the bay'ah should pledge to obey in weal and woe and in ease and hardship. A law shall be published that will determine the wording in accordance

with the previous points.

Once the bay'ah is given to the Khaleefah, then the bay'ah becomes a trust on the neck of the one who gave the bay'ah, where he is not allowed to withdraw it. For it is a right (for the Muslim) in terms of convening the Khilafah till the time he gives it. But once he has given it, he is not allowed to withdraw it. Even if he wanted to do so, he is not allowed to. Al Bukhari narrated from Jabir ibn Abdullah (may Allah be pleased with them) that a Bedouin gave bay'ah to the Messenger of Allah (saw) on Islam, but he became unwell, so he said:**"Relieve me of my bay'ah"**, the Messenger of Allah (saw) refused. Then he came and said the same, but the Messenger (saw) rejected. So he left. The Messenger of Allah (saw) said:

«المدينة كالكير تنفي خَبَثَها، ويَنْصَعُ طيبُها»

"The town is like the mason's bellow (or furnace), it gets rid of (cleans) its impurity, and its goodness (scent) manifests (shines)" [Maalik, Bukhari, Muslim]

Muslim also narrated from Nafi, he said: Abdullah ibn 'Umar said to me: I heard the Messenger of Allah (saw) say:

«من خلع يداً من طاعة لقي الله يوم القيامة لا حجة له»

"Whoever withdraws a hand from obedience, he would meet Allah on the day of judgement without having proof for himself" [Muslim]

The breaking of the bay'ah from the Khaleefah is a withdrawal of the hand from the obedience to Allah. However, this is the case if his bay'ah to the Khaleefah was a bay'ah of contract, or a bay'ah of obedience to a Khaleefah accepted and pledged by the Muslims. But if he pledged himself to a Khaleefah initially, and the bay'ah

was not completed to him (by the Muslim), then he has the right to relieve himself from that bay'ah, in view of the fact that the contracting bay'ah has not been concluded to him from the Muslims. So the prohibition in the hadith is focused on withdrawing a bay'ah to a Khaleefah, not to a man for whom the Khilafah contract was not completed.

The unity of the Khilafah

The Muslims are obliged to live in one State, and be ruled by one Khaleefah. It is forbidden for the Muslims in the world to have more than one State and more than one Khaleefah.

It is also necessary that the ruling system in the Khilafah State be a system of unity, and it is forbidden for it to be a federal system. This is due to what Muslim narrated that 'Abdullah ibn 'Amru ibn al-'A'as said that he heard the Messenger of Allah (saw) say:

« ومِنْ بايع إماماً، فأعطاه صفقة يده، وثمرة قلبه، فليطعه إن استطاع، فإن جاء آخر ينازعه، فاضربوا عنق الآخر »

"Whoever pledged allegiance to an Imam giving him the clasp of his hand and the fruit of his heart, he should obey him as much as he can, and if another comes to dispute with him, you must strike the neck of the latter" [Muslim]

It has also been narrated by Muslim that Afrajah said: I heard the Messenger of Allah (saw) say:

« مَنْ أتاكم وأمرُكُم جميعٌ على رجل واحد، يريد أن يشقّ عصاكم، أو يُفرّق جماعتكم فاقتلوه »

"Whoever comes to you while your affair has been united over one man, intending to divide your power or dissolve your unity, kill him." [Muslim]

It has also been reported by Muslim from Abu S'aid Al Khudri that the Messenger of Allah (saw) said:

« إذا بُويع لخليفتين فاقتلوا الآخر منهما »

"If the Oath of Allegiance (bay'ah) has been taken for two Khulafa'a, kill the latter of them." [Muslim]

Muslim also reported that Abu Hazim said: I accompanied Abu Hurairah for five years and heard him talking about the Messenger of Allah (saw), he said:

« كانت بنو إسرائيل تسوسهم الأنبياء، كلّما هلك نبي خلفه نبي، وإنه لا نبي بعدي، وستكون خلفاء فتكثر، قالوا: فما تأمرنا؟ قال: فُوا ببيعة الأول فالأول، وأعطوهم حقهم، فإن الله سائلهم عما استرعاهم »

"The children of Israel were governed by Prophets; whenever a Prophet died another Prophet succeeded him; but there will be no prophet after me. There will soon be Khulafa'a and they will number many; they asked: What then do you order us? He (saw) said: Fulfill allegiance to them one after the other, and give them their dues; for verily Allah will ask them about what he entrusted them with". [Bukhari & Muslim]

The first hadith demonstrates that if the Imamah (Khilafah) has been given to someone he should be obeyed, and if another man comes to dispute his authority, he should be fought and killed if he did not renounce the dispute.

The second hadith demonstrates that when the Muslims are united under the leadership of one Ameer, and a person comes along with intent to divide their power and dissolve their unity, his killing becomes compulsory. The two hadiths clearly indicate the prohibition of dismembering the State, are a strong warning against its division, and preventing any breakaway attempt even by using the sword (force).

The third hadith indicates that in the case of absence of a Khaleefah, due to his death, removal or resignation, then if the bay'ah has been taken for two Khulafa'a, the latter of them should be killed. This means the Khaleefah is the one who was given first a proper bay'ah, while the one who was given bay'ah after that is killed if he does not announce his withdrawal from the Khilafah post; and by greater reason the same applies if the bay'ah was given to more than two. This clearly demonstrates that the dismembering of the State is forbidden, which means that turning it into small States is forbidden; rather it must remain one single State.

The fourth hadith indicates that the Khulafa'a would number many after the Messenger of Allah (saw), and that the *Sahabah* asked him about what he ordered them to do when the Khulafa'a numbered many, and he replied that they should fulfil their allegiance to the Khulafa'a one after the other, starting by the first one they gave their bay'ah to, for he is the legitimate one and he alone should be obeyed. As for the others, they are not to be obeyed for their bay'ah is void and null and unlawful, for it is forbidden for another Khaleefah to be given a bay'ah while there exists a Khaleefah already in office. This hadith also indicates that obedience to a single Khaleefah is obligatory. Therefore it is forbidden for the Muslims to have more than one Khaleefah and more than one single State.

The mandatory powers of the Khaleefah

The Khaleefah possesses the following mandatory powers:

A – It is he who adopts the divine rules (*Akham Shar'iyya)* necessary for managing the affairs of the *ummah*, which are deduced through viable ijtihad from the Book of Allah and the Sunnah of His Messenger. Thus they become a binding law that must be obeyed and not objected.

B - He is responsible for the domestic and foreign policies of the State; he is the supreme commander in chief of all the armed forces and he has full powers to declare war, conclude peace treaties, truces and all other treaties.

C - He has the powers to accept (foreign) ambassadors and to refuse them, as well as the powers to appoint Muslim ambassadors and to remove them.

D - It is the Khaleefah who appoints and removes the assistants and Walis; they are all responsible before him and before the Council of the *Ummah*.

E - It is he who appoints and removes the supreme judge (*Qadhil-Qudhat*), as well as the other judges excluding the judge of mahkamat al-Mazalim, where he appoints him, but he is restricted regarding his dismissal as is explained in the chapter of judiciary. He also appoints the managers of the administration departments, army commanders, chiefs of staff, and the commanders in chief; they are all answerable to him and not to the Council of the *Ummah*

F - It is he who adopts the divine rules, in the light of which the State's budget is drafted, and he who decides the details of the budget and the funds allocated to each department, whether concerning revenues or expenses.

As for the detailed evidences of the six sections mentioned above, the evidence about section "A" is the general consensus of the *Sahabah*. *Qanoon* (law) is a technical term which means the order that the ruler (*Sultan*) issues so that people abide by it. People of *Qanoon* (law) define it as **"the host of principles that the *Sultan* (ruler) compels people to follow in their relations"**, in other words if the *Sultan* issues certain rules, then these rules become law and people have to abide by them; and if the *Sultan* does not issue them, then they do not become law and people are not obliged to abide by them. The Muslims follow the rules of *Shar'*, so they abide by Allah's (swt) commands and prohibitions. What they abide by are the commands and prohibitions of Allah, not those of the *Sultan*, so what they follow are divine rules and not the orders of the *Sultan*. However the *Sahabah* have differed regarding the Sharia'h rules. Some of them understood matters from the divine texts different to others' understanding. Each one of them abided by what he understood and that represented the rule of Allah on his behalf. However, there are some divine rules related to managing the affairs of the *Ummah* that all the Muslims should abide by according to one single opinion, and not each proceeding according to his own *ijtihad*. This indeed took place in the past. Abu Bakr, for instance, considered it fit to distribute the funds equally among all Muslims for it was their equal right. 'Umar deemed it wrong to give to those who had fought against the Messenger of Allah (saw) the same as those who fought alongside him, or to give to the needy equal to that is given to the wealthy. However when Abu Bakr was the Khaleefah, he enforced his opinion upon the people, the judges and *Walis* executed his opinion and 'Umar also submitted to Abu Bakr's opinion and executed it. And when 'Umar became Khaleefah he enforced his own opinion which differed from that of Abu Bakr, i.e. he ordered the funds to be distributed preferentially and not equally, i.e. the Muslims were given funds according to the length of time they had been Muslims and according to their needs. Muslims abided by this rule, and the judges and *Walis* executed it. Therefore, a general

consensus of the *Sahabah* was established stating that the Imam has the right to adopt specific rules and enforce their implementation, and Muslims have to abide by such rules even if they contradicted with their own ijtihad, and they must also abandon their own opinions and ijtihads. These adopted rules are in fact laws (or canons); thus the enacting of laws belongs to the Khaleefah alone and no one else has such a right.

As for section "B", its evidence is derived from the actions of the Messenger of Allah (saw). He (saw) used to appoint the *Walis* and judges and hold them accountable to him. He (saw) used to control trading and prohibit fraud and cheating. He (saw) used to distribute the funds among the people, and help the unemployed find work. He (saw) used to run all the State's internal affairs. He (saw) also used to write to the kings and meet with the envoys and receive the delegates. He (saw) also carried out all the foreign affairs of the State. He (saw) effectively used to take command of the armed forces during the raids and he (saw) used to lead the battles, and he (saw) used to send out all the expeditions and appoint their leaders. In one instance he (saw) appointed Usama ibn Zayd as the head of an expedition to Ash-Sham; the *Sahabah* were not pleased with this due to Usama's young age, but the Messenger of Allah (saw) forced them to accept his leadership, which proves that he was effectively the commander of the armed forces and not just its supreme commander in chief. It was he (saw) who declared war on Quraysh, and on Banu Qurayzah, Banu Nadhir, Banu Qaynuqa', Khayber and the Romans. All the wars that took place were declared by him (saw). This proves that only the Khaleefah has the right to declare war. It was also the Messenger of Allah (saw) who signed the treaties with Banu Madlij and their allies of Banu Dhumra. He (saw) signed a treaty with Yuhanna (Jonathan) ibn Ru'ba, the leader of Ayla, and he (saw) also signed the treaty of Al-Hudaybiyah. The Muslims on that occasion were outraged but he (saw) ignored their opinion and dismissed their pleas, and went ahead and signed the treaty. This

proves that the Khaleefah only has the mandatory powers to sign treaties, whether these are peace treaties or any other.

As for the section "C", its evidence is that it was the Messenger of Allah (saw) himself who received the two envoys of Musaylama, and it was he (saw) who received Abu Rafi'i, an envoy from Quraysh; it was also he (saw) who sent envoys to Heraclius, Khosroes, Al Muqawqis, Al-Harith Al-Ghassani, King of Al-Heera, Al Harith Al-Himiary, King of Yemen, the Negus of Abissania (Al-Habashi), and he sent also 'Uthman Ibn 'Affan to Quraysh during the Hudaybiyah affair. This proves that the Khaleefah is the one who receives and declines the ambassadors (envoys) and it is he who appoints the ambassadors.

As for section "D", its evidence is that it was the Messenger of Allah (saw) himself who used to appoint the *Walis*; for he appointed Mu'adh as *Wali* over Yemen. And he (saw) used to remove them; he removed Al-A'la' ibn Al-Hadhrami from his post as *Wali* of Bahrain after his people complained about him. This indicates that the *Walis* are responsible before the people of the *wilayah* (regions), and also before the Khaleefah, as well as the Council of the *Ummah*, as it represents all the *wilayahs*. This is regarding the *Walis* (governers). As for the assistants, the Messenger of Allah (saw) had two assistants; Abu Bakr and 'Umar. He did not remove them and appoint others to replace them during his lifetime. However the assistant derives his authority from the Khaleefah, and since he acts in the capacity of his deputy, the Khaleefah then has the right to remove him. This is analogous with the representative (agent), where a person has the right to dismiss his representative (agent).

As for section "E", its evidence is derived from the fact that the Messenger of Allah (saw) appointed 'Ali as a judge over Yemen. Ahmad narrated from 'Amru ibn al-'Ass, he said: "Two men disputing with each other came to the Messenger of Allah (saw) (seeking justice), so he (saw) said to me:

« اقض بينهما يا عمرو »

"Judge between them, O Amru." [Ahmad]

I said: "You are better and more worthy of that." He (saw) said:

« وإن كان »

"Even though!" [Ahmad]

So I said: "What shall I have if I judged?" He (saw) said:

« إن أنت قضيت بينهما فأصبت القضاء فلك عشر حسنات. وإن أنت اجتهدت فأخطأت فلك حسنة »

"If you judged and you were right, you would get ten rewards and if you get it wrong you would get one reward." [Ahmad]

'Umar (may Allah be pleased with him) used to appoint and remove judges. He appointed Shareeh as a judge over Kufa and Abu Musa as a judge over Basra. He also removed Shurahbeel ibn Hasna from his post as *Wali* over Ash-Sham and appointed Mu'awiya instead. Shurahbeel said to him: **"Is it because of an act of disobedience or treason that you removed me?"** 'Umar replied: **"Neither, but I wanted to appoint a man who is stronger."** 'Ali, on one occasion appointed Abu al-Aswad and then he removed him. Abu al-Aswad asked him: **"Why did you remove me?** I never cheated or committed a crime" 'Ali said: **"I noticed that your voice rose above the disputing men."** 'Umar and 'Ali did this in the presence of the *Sahabah*, and yet no one of the *sahabah* disapproved or censured their actions. This proves that

the Khaleefah reserves the right to appoint the judges in principle, and he can also delegate someone to appoint the judges on his behalf. This is analogous with representaion (*wakalah*), where he reserves the right to assign a deputy for himself in any of his mandatory powers as he is allowed to appoint someone to represent him in any of his dispositions.

As for the exclusion of the removal of the court of mahkamat al-mazalim, this would be in case the judge is litigating a case raised against the Khaleefah, his assistants or the chief judge. This is according to the sharee'ah principle that states: **"the means that leads to haram is itself haram."** If the Khaleefah is given power to dismiss the judge of mazalim in this case, then this would influence the verdict of the judge, and accordingly obstruct the divine rule, a matter which is haram. Giving the Khaleefah the power of dismissing the judge of mazalim in this case is thus a means to haram, particularly it is enough in this rule for the influence on the verdict to most likely rather than certainly take place. Therefore, the responsibility of dismissing the judge of mazalim in this case is left to the mahkamat al-mazalim. In other than this case the rule remains as usual, ie the right of appointing and dismissal of the judge of mazalim is to the Khaleefah.

As for the directors of the State departments, the Messenger of Allah (saw) appointed secretaries for the various departments of the State. They were considered to be directors of those departments. He (saw) appointed Al-Mu'ayqeeb ibn Abi Fatimah Ad-Dooci in charge of his official seal and the booty. He (saw) appointed Hudhayfah ibn Al Yaman to assess the harvest of Al-Hijaz, and Zubayr ibn Al-'Awwam to record the funds of the "Sadaqah". He (saw) appointed Al-Mughira ibn Shu'ba in charge of registering the debts and various transactions, and so on.

As for the army commanders and chief commanders, the Messenger of Allah (saw) appointed Hamza ibn 'Abdul Muttalib as commander of an army of thirty riders to confront Quraysh on the

seashore; and he appointed Muhummad ibn 'Ubayda ibn Al-Harith at the head of sixty fighters and instructed him to confront Quraysh in the valley of Rabigh. He (saw) also appointed Sa'ad ibn Abi Waqqas at the head of an expedition numbering twenty riders and dispatched him towards Makkah. It can be therefore seen, that he (saw) used to appoint the army commanders, and this proves that it is the Khaleefah who appoints the commanders and the army chiefs of staff.

All these posts were answerable to the Messenger of Allah (saw) and to nobody else, and this indicates that the judges, directors of departments, army commanders, chiefs of staff and various senior officials are answerable to none but the Khaleefah, and that they are not answerable to the Council of the *Ummah*. Only the delegated assistants, the *Walis* and the '*Amils* are responsible before the Council of the *Ummah* because they are rulers, and nobody else is responsible before the Council, rather everyone else has to report back to the Khaleefah.

As for section "F", the State budget in terms of the revenues and the expenditures is controlled by the *Shari'ah* rules. Not a single *dinar* is levied except according to a divine rule, nor is any single *dinar* spent except according to a divine rule. However the details of the expenditure or what is known as the budget sections is left to the Khaleefah according to his *ijtihad*, as are the details of the revenues. It is the Khaleefah, for instance, who decides the amount of the *Kharaj* of land, and the *Jizya* as well as any other levies and revenues. It is the Khaleefah who decides the expenditure allotted for roadwork, hospitals and other forms of expenditure. All such matters are left to the Khaleefah, and he decides them according to his own *ijtihad* and opinion. This is because the Messenger of Allah (saw) used to receive the revenues from the '*Amils*, and spend them. It was he (saw) who authorized the *Walis* on some occasions to receive funds and spend them; this was the case when he (saw) appointed Mu'adh over Yemen. The Khulafa *Rashidoon* then did the same, each one of them collected

the revenues and spent them according to his opinion and own *ijtihad* in his capacity as Khaleefah. None of the *Sahabah* ever disapproved, and nobody ever spent a single *dinar* without the Khaleefah's consent. When 'Umar appointed Mu'awiya as *Wali*, he gave him a general *wilayah* whereby he had powers to collect and spend the funds. All this proves that the different sections of the budget are decided by the Khaleefah or anyone acting on his behalf.

These are the detailed evidences regarding the Khaleefah's mandatory powers, and these are confirmed by the Hadith narrated by Ahmad and Al-Bukhari from Abdullah b 'Umar that he heard the Messenger of Allah (saw) say:

«...الإمام راع وهو مسؤول عن رعيته»

"The Imam is a guardian, and he is responsible for his subjects." [Bukhari, Ahmad, Bayhaqi]

This means that all the matters related to the management of the subject's affairs is the responsibility of the Khaleefah, and he reserves the right to delegate anyone with whatever responsibility, and however he deems fit, in analogy with *wakala* (representation).

The Khaleefah is restricted in adoption (enacting of laws) by the divine rules

The Khaleefah is restricted by the divine rules in his powers of adoption. He is thus forbidden from adopting a rule that has not been properly extracted from the divine evidences. He is also obliged to restrict himself to the rules he has adopted, and to the method of *ijtihad* (extracting rules) he has committed himself to. Therefore he is forbidden from adopting a rule that has been extracted by a method that is contrary to the one he has adopted, or from issuing an order that contradicts the rules which he has

adopted. The Khaleefah is thus restricted with two matters:

The evidences to the first matter, i.e. the Khaleefah is restricted regarding the adoption of the divine rules, they are two:

1. Allah (swt) has obliged every Muslim, including the Khaleefah to conduct his actions according to the divine rules. Allah (swt) says:

﴿ فَلاَ وَرَبِّكَ لاَ يُؤْمِنُونَ حَتَّى يُحَكِّمُوكَ فِيمَا شَجَرَ بَيْنَهُمْ﴾

"*But no, by your lord, they will not believe (in the truth) until they make you judge of what is in dispute between them."* [TMQ 4:65]

Conducting actions according to the divine rules obliges the Muslim to adopt a specific rule when the understanding of the Legislator's speech varies, i.e. when understanding the meaning of the Legislator's speech varies. So adopting a specific rule from amongst various rules becomes obligatory upon the Muslim when he wants to carry out an action, i.e. when he wants to implement the rule. This is also obligatory upon the Khaleefah, when he performs his duty, which is the ruling.

2. The content of the text of the bay'ah which the Khaleefah is given obliges him to abide by the Islamic *Shari'ah*, as it is a bay'ah on the Quran and the Sunnah. He therefore is forbidden from violating it and would even commit an act of disbelief if he did so with conviction, whereas he would be disobedient, a wrongdoer and a rebel if he violated the *Shari'ah* without conviction.

3. The Khaleefah is appointed to implement the *Shari'ah*, therefore he is forbidden to refer to anything other than *Shari'ah* in ruling the Muslims. This is because *Shari'ah* has made this decisively unlawful, to the point where belief is denied for anyone who rules by other than Islam, and this is a matter which is a connotation of decisiveness. This means that the Khaleefah is restricted in his adoption of the rules, i.e. in his enacting of laws, solely by the

divine rules. If he enacts any law from other than *Shari'ah*, he would be committing an act of disbelief if he did so with conviction, and an act of disobedience, wrongdoing and rebellion if he did not believe in it.

As for the second matter, the Khaleefah is restricted to the rules that he adopted, and to the method of deduction he committed himself to. The evidence for this is that the divine rule which the Khaleefah executes is the divine rule that is upon his neck and not on anybody else. In other words it is the divine (*Shari'ah*) rule that he adopted to conduct his affairs and not just any divine rule. This means that if the Khaleefah extracted a rule or imitated in a rule, this divine rule would become Allah's rule on his neck. He would be restricted also in adopting this rule for all the Muslims, and forbidden from adopting any other rule, for another rule would not be Allah's rule upon his neck, and therefore it would not be a divine (*Shari'ah*) rule for him, and accordingly it would not be a divine (*Shari'ah*) rule for the Muslims. Therefore he is restricted in the orders which he decrees for the subjects by the divine (*Shari'ah*) rules that he has adopted. He is forbidden from issuing an order that conflicts with what he has adopted in terms of divine (*Shari'ah*) rules. In the case he did so, it would be as if he issued an order contrary to the divine (*Shari'ah*) rule, hence he is forbidden from issuing an order conflicting with what he adopts in terms of divine (*Shari'ah*) rules.

The understanding of the divine (*Shari'ah*) rule also varies according to the method of "*Istinbat*" (extraction). If the Khaleefah considers that the "*'Illah*" (cause) of the ruling is considered a divine cause if taken from a divine (*Shari'ah*) text, and he does not consider that the interest (*maslaha*) as a divine cause, nor consider the "*Masalih mursala*" (undefined interests) as being a divine (*Shari'ah*) evidence, then he would have defined the method of "*istinbat*" for himself. Accordingly, he must restrict himself to it, and it would be wrong for him to adopt a rule that had its evidence as "*Masalih Mursala*", or to use an analogy (*qiyas*) based on an *'illah*

(cause) that was not extracted from a divine (*Shari'ah*) text. For such a rule would not be considered a divine (*Shari'ah*) rule upon his neck, because he does not consider its evidence as a divine (*Shari'ah*) evidence, therefore it would not be a divine (*Shari'ah)* rule in his view. And since such a rule is not considered a divine rule in respect to the Khaleefah, it would also not be a divine rule with respect to the Muslims. This would be as if the Khaleefah has adopted a rule alien to the *Shari'ah* and this is forbidden. If the Khaleefah is a "*Muqallid*" (imitator) or a "*Mujtahid Mas'ala*" (Jurisprudent in a single matter), and has no specific method of *Istinbat*, in this case, he is allowed to adopt any divine (*Shari'ah*) rule whatever its evidence, as long as he has a probable evidence, and he would not be restricted by any method in adopting the rules. He is only restricted when he issues orders, not to issue them except in accordance with the rules he has adopted.

The Khilafah State is a Human State not a Theocratic State

The Islamic state is the Khilafah. It is the supreme leadership over all the Muslims worldwide, so if a Khaleefah was given legitimate bay'ah in any muslim land, and the Khilafah was established, then it is forbidden upon muslims worldwide to establish another Khilafah. This is due to the saying of the messenger (saw):

« إذا بويع لخليفتين فاقتلوا الآخر منهما »

"If bay'ah was taken to two Khaleefah, then kill the latter of them." [Muslim, Bayhaqi]

Khilafah is established for implementing the rules of the Islamic *Shari'ah* using the concepts that Islam has brought and the rules that it has legislated; and also to convey the Islamic Message to the world. The message is conveyed by introducing Islam to people and calling on them to embrace it and performing Jihad in the way

of Allah. Khilafah is also known as *Imamah* or *Imaratul-Mu'mineen* (leadership of the believers). It is a temporal post and not a post relating to the hereafter. The Khilafah exists to implement Islam on people and to spread it among them. It is definitely different to the Prophethood.

Prophethood is a theological position, which Allah (swt) gives to whomever He (swt) wishes. The Khilafah on the other hand is a human post whereby the Muslims give their bay'ah to whomever they wish, and appoint whomever they like over them as Khaleefah from among the Muslims. Our Messenger Muhammad (saw) was a ruler who implemented the *Shari'ah* which he received from Allah. So he (saw) held the Prophethood and the Messengership and at the same time also assumed the post of the ruler over the Muslims in implementing the rules of Islam. Allah (swt) thus commanded him to rule as well as to convey the Message. He (swt) ordered him:

﴿وَأَنْ احْكُمْ بَيْنَهُمْ بِمَا أَنزَلَ اللَّهُ﴾

"And judge between them by that which Allah has revealed" [*TMQ* 5:49]

He (swt) also says:

﴿ إِنَّا أَنزَلْنَا إِلَيْكَ الْكِتَابَ بِالْحَقِّ لِتَحْكُمَ بَيْنَ النَّاسِ بِمَا أَرَاكَ اللَّهُ﴾

"We have sent down to you the Book in truth so that you judge between people by that which Allah has shown you" [TMQ 4:105]

Allah (swt) also says:

﴿يَا أَيُّهَا الرَّسُولُ بَلِّغْ مَا أُنزِلَ إِلَيْكَ مِنْ رَبِّكَ﴾

"O Messenger! Proclaim the (message) which has been sent to you from your

Lord" [TMQ 5:67]

﴿وَأُوحِيَ إِلَيَّ هَذَا الْقُرْآنُ لأَنذِرَكُمْ بِهِ وَمَنْ بَلَغَ﴾

"This Qur'an has been revealed to me by inspiration so that I may warn you and all whom it reaches." [TMQ 6:19]

﴿يَا أَيُّهَا الْمُدَّثِّرِ قُمْ فَأَنذِرْ﴾

"O you wrapped up. Arise and deliver warning." [TMQ 74:1, 2]

Thus, the Messenger (saw) used to hold two posts: the post of prophethood and message, and the post of Muslims leadership in the worldly life for implementing the *shari'ah* of Allah revealed to him.

However, the Khilafah after the Messenger of Allah (saw) was held by humans, who were not Messengers. It is thus possible for the Khulafa'a to do as other humans do of making mistakes, being absent minded, forgetful as well as committing a sin and other things. This is because they are humans, so they are not infallible, for they are not prophets or messengers. The Messenger of Allah (saw) has informed us that the Imam may make a mistake and he informed us that the Imam may do things which people hate and curse him for, like oppression, disobedience and other things. He also informed us that open Kufr might appear from the Imam. Muslim reported on the authority of Abu Hurairah that the Messenger of Allah (saw) said:

« إنما الإمام جُنَّة، يقاتل من ورائه ويُتقى به، فإن أمر بتقوى الله عز وجل وعدل كان له بذلك أجر، وإن يأمر بغيره كان عليه منه »

"Verily the Imam is but a shield from behind which the people fight and with which they protect themselves. So if he ordered to observe the taqwa of Allah and he was just he would have equal to these (actions) in reward and if he ordered other than that it would be against him equal to that." [Muslim, Ahmad]

This means that it is possible that the Imam may command with other than the fear of Allah. Muslim also narrated from 'Abdullah (ibn Mas'ood) who said the Messenger of Allah (saw) said:

« إنها ستكون بعدي أثرة وأمور تنكرونها، قالوا: يا رسول الله كيف تأمر من أدرك منا ذلك؟ قال: تؤدون الحق الذي عليكم، وتسألون الله الذي لكم

«

"There would be after me selfishness and matters which you hate." They said: 'O Messenger of Allah, how do you order the one of us who would witness that?' He (saw) said: "You should offer the right due upon you, and ask from Allah what is due to you." [Muslim, Abu Y'ala]

Bukhari narrated on the authority of Junada ibn abi Umayah who said: "we went to 'Ubadah ibn as-Samit when he was sick and we said may Allah (swt) guide you. Inform us of a *Hadith* from the Messenger of Allah (saw) so Allah may benefit you from it. He said:

«دعانا النبي صلى الله عليه وسلم **فبايعناه، فقال فيما أخذ علينا أن بايعَنا على السمع والطاعة، في منشطنا ومكرهنا، وعسرنا ويسرنا، وأثرة علينا، وان لا ننازع الأمر أهله، قال: إلا أن تروا كفراً بَواحاً عندكم من الله فيه برهان»**

"The Messenger of Allah (saw) called upon us and we gave him the bay'ah, and he said concerning what he had taken from us that we should give him the pledge to listen and obey, in what we like and dislike, in our hardship and ease, and that we should not dispute his authority over the people unless we saw clear Kufr upon which we had a proof from Allah." [Bukhari]

'A'isha narrates that the Messenger of Allah (saw) said:

« ادرأوا الحدودث عن المسلمين ما استطعتم، فإن كان له مخرج فخلوا

سبيله. فإن الإمام أن يخطئ في العفو خير من أن يخطئ في العقوبة »

"Avert the punishments from the Muslims as much as you can, so if the accused has any way out let him go free, because it is better for the Imam to make a mistake in forgiving than to make a mistake in imposing the punishment." [Tirmidhi]

These A*hadith* clearly make the point that it is possible for the Imam to make a mistake, forget or disobey. Despite this, the Messenger of Allah (saw) has ordered obedience to him as long as he governs by Islam and no open Kufr occurs from him and he does not command with sin. Therefore, the Khulafa'a who came after the Messenger of Allah (saw) are humans who do both right and wrong, and they are not infallible, i.e. they are not prophets so as to say Khilafah is a theological state. It is rather a human State, in which Muslims give bay'ah to a Khaleefah for implementing the rules of Islamic *shariah*.

The time term of the Khaleefah

The time term of the Khaleefah in office is not determined by a certain time period. As long as the Khaleefah abides by the *Shari'ah*, executes its laws and is able to perform the duties of the State and the responsibilities of the Khilafah, he remains in office. This is because the texts concerning the bay'ah came as indefinite (*mutlaq*) and not restricted to any specific period of time. Anas ibn Malik reported that the Messenger of Allah (saw) said:

« اسمعوا وأطيعوا، وإن استُعمِل عليكم عَبدٌ حَبشَيٌ، كأن رأسه زبيبة »

"Do hear and obey, even if you were ruled by an Abyssinian slave, whose hair is like the raisin" [Bukhari, Ibn Maja].

In another narration He (saw) said:

« يقودكم بكتاب الله »

"…as long as he leads you by the Book of Allah" [Muslim, Ahmad]

Besides, all the *Khulafa Rashidoon* were given an indefinite (*mutlaq*) bay'ah which is the one mentioned in the Ahadith. They were not of a limited time period (in office). Each one of them assumed the post of Khilafah until he died; and this represents a general consensus from the *Sahabah* (r.a.), confirming that the Khilafah is not of a limited term of office but an unrestricted one. Thus if a Khaleefah is given a bay'ah, he remains in office until he dies.

However, if the Khaleefah underwent a change that made him unfit for the post, or necessitated his removal, his term would be terminated and he would be removed. However, this cannot be interpreted as a limitation to his Khilafah term, but merely to indicate that a breach of the Khilafah's conditions has occurred. For the wording of the bay'ah, confirmed in the *Shari'ah* texts and

the general consensus of the *Sahabah* makes the Khilafah of an unlimited term of office. It is rather restricted in terms of the Khaleefah's undertaking of what he was given the bay'ah for, i.e. to rule by the Book and the Sunnah and execute their Laws. But if he did not uphold the *Shari'ah* or did not implement it, then he must be removed.

The removal of the Khaleefah

If the Khaleefah lost any of the seven contracting conditions, then he is not legally allowed to continue as a Khaleefah, he must rather be removed.

The decision of his removal is only in the hand of '*Mahkamat ul-Madhalim*', for it is the one that decides whether the Khaleefah has lost any of the contracting conditions or not. This is because any matter for which the Khaleefah has to be removed, or for which his removal becomes necessary, is known as a '*Madhlima*' (an act of injustice) and it should be removed. The matter, however, should be investigated and evidence provided as the '*Madhlima*' (injustice) must be proved before a judge. Since the court of unjust acts (*mahkamat ul-madhalim*) is the body which rules over any complaint (*mudhalim*) received, and its judge is the person entitled to prove its occurrence and to decide upon it. Therefore, mahkamat ul-mazalim is the body that decides whether or not the Khaleefah has lost the contracting conditions, and it is the one that decides the removal of the Khaleefah. However, if such a situation did arise and, as a result, the Khaleefah stepped down, this would be the end of the matter. If, however, the Muslims thought that he should be removed and the Khaleefah disputed with them, the matter would be referred to the judiciary to be settled, for Allah (swt) says:

﴿فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ﴾

"If you dispute about any matter, refer it to Allah and His Messenger." [TMQ 4: 59]

In other words, if the *Ummah* disputed with those in authority, this dispute would be between the ruler and the *Ummah*. Referring the dispute to Allah and the Messenger, means referring it to the judiciary, in other words to the court of unjust acts.

The time limit given to the Muslims to appoint a Khaleefah

The time limit allowed for the Muslims to appoint a Khaleefah is three days including their nights. It is forbidden for a Muslim to spend more than three nights without having a bay'ah on his neck. As for allowing a maximum of three nights, this is because appointment of a Khaleefah becomes compulsory from the very moment the former Khaleefah dies or is removed. However, it is allowed to delay the appointment as long as the Muslims are involved with the task at hand for three days including their nights. If the limit exceeds three nights and a Khaleefah is not appointed by that time the matter should be examined: If the Muslims were involved in the appointment of a Khaleefah and failed to do so within three nights for compelling reasons beyond their control and ability, then the sin would fall from their necks, for they were endeavoring in their responsibility to perform this duty and were compelled against their will to delay the implementing of that duty. Ibn Habban and Ibn Majah narrated from Ibn 'Abbas, he said: The Messenger of Allah (saw) said:

« إن الله وضع عن أمتي الخطأ، والنسيان، وما استُكْرِهوا عليه »

"Allah had forgiven my *Ummah* for the mistake and forgetfulness and that which they were compelled of". [Ibn Maja]

But if they were not involved in the task they would all be sinful until such time that a Khaleefah was appointed, and only then would the sin fall from their necks. As for the sin they had committed by neglecting the duty of appointing a Khaleefah this would not fall from them, rather it remains, and Allah (swt) would punish them as he would punish for any sin committed by a Muslim for not performing a duty.

As for the obligation of the immediate involvement in the bay'ah of the Khaleefah once the Khilafah post became vacant, this is because the *sahabah* addressed that matter in the hall of Bani Sai'dah after the death of the Messenger (saw), on the same day of his death and before his burial. The contracting bay'ah of Abu Bakr was concluded on the day of his death. On the second day, they gathered the people in the masjid to give the bay'ah of obedience to Abu Bakr.

As for the fact that the maximum time limit allowed for the Muslims to appoint a Khaleefah is three days including their nights, its evidence is that when Umar felt that his death was imminent he delegated the people of the Shura to appoint a Khaleefah giving them a time limit of three days and instructing them to kill anyone who disagreed with the group once the three days had lapsed. He assigned the execution of such instruction, i.e. killing the one who might disagree to fifty people from the Muslims despite the fact that the group was formed people of Shura and senior *sahabah*. This took place in the presence of the *Sahabah* and no one has objected or condemned such instruction. This became a general consensus of the *Sahabah* stating that it is forbidden for Muslims to remain without a Khaleefah for more than three days including their nights. The consensus of the *Sahabah* is *Shari'ah* evidence just like the Quran and the Sunnah.

Al-Bukhari reported from Al-Miswar ibn Makhramah, he said: "Abdur Rahman knocked at my door after a part of the night passed till I woke up. He said: I see you have been sleeping. By

Allah, I did not enjoy much sleep in these three", meaning the three nights. Once the people prayed the fajr, the bay'ah was concluded to Uthman.

So, it is obliged upon Muslims once the post of the Khaleefah became vacant, to engage in preparing the bay'ah for the next Khaleefah, and to complete it within three days. If they however did not engage in the bay'ah of the Khaleefah and the Khilafah was annulled and they remained silent doing nothing, then they are sinful from the moment the Khilafah was annulled and they remained silent about it. This is the case today, where the Muslims are sinful because they did not establish the Khilafah from the moment it was destroyed on 28 Rajab 1342 H until they establish it. No one would be free of that sin except those who were engaged in serious work for establishing it with a sincere truthful group. In that case he would relieve himself of the sin. This sin is great as explained in the hadith of the Messenger of Allah (saw):

« ... ومن مات وليس في عنقه بيعة مات ميتة جاهلية »

"Whoever dies without having a bay'ah on his neck he would have died the death of jahiliyyah." [Muslim, Bayhaqi]

This indicates the greatness of the sin.

2. The Delegated Assistant (*Mu'awin at-Tafweed*)

The assistants are the *wazirs* whom the Khaleefah appoints to assist him in discharging the tasks and responsibilities of the Khilafah. There are numerous tasks in the Khilafah, especially when the State is growing and expanding, and these would be a heavy burden for the Khaleefah alone. Hence he needs people to help him in carrying this burden and discharging these responsibilities.

It is invalid to call them wazirs without restriction, otherwise the meaning of wazir in Islam will be confused with its meaning in the current man made systems based on the secular, capitalist democratic basis, or other systems we observe nowadays.

The delegate assistant or mu'awin ut-tafweedh is the wazir appointed by the Khaleefah to carry the responsibility of ruling and authority. So, the Khaleefah delegates him to discharge affairs according to his own opinion and to execute them according to his own ijtihad, in accordance with the divine rules. Thus the Khaleefah delegates to him general examination of the affairs and general deputyship to him.

Al-Haakim and at-Tirmidhi reported from Abu Sa'id al-Khudri that the Messenger of Allah (saw) said:

«وزيراي من السماء جبريل وميكائيل ومن الأرض أبو بكر وعمر»

"My two assistants *(wazirs)* from the heavens are Jibra'il and Mika'il and on the earth are Abu Bakr and Umar."

The word '*wazir*' in the *Hadith* means the helper and the assistant, which is the linguistic meaning. It has been used in the Qur'an with such a meaning; Allah (swt) says:

وَاجْعَلْ لِي وَزِيرًا مِنْ أَهْلِي

"And appoint for me a helper from my family." [TMQ 20:29].

It also means a helper and assistant. The word *wazir* in the *Hadith* is unrestricted (*mutlaq*) which includes any help or assistance in any matter; therefore he can assist the Khaleefah in the functions and the responsibilities of the Khilafah. The *Hadith* of Abu Sa'id al-Khudri is not specific to assistance in the matter of ruling, because Jibra'il and Mika'il, the two *wazir*s of the Messenger of Allah (saw) from heaven, have no relationship in helping him in the responsibilities and functions of ruling. Therefore the word *wazirai* (my two *wazirs*) in the *Hadith* does not indicate other than the linguistic meaning, which are my two assistants. It is understood from the hadith that it is allowed to have more than one assistant.

Though Abu Bakr and 'Umar did not appear that they carried the responsibilities of ruling along with the Messenger of Allah (saw). However appointing them as two *wazir*s to him gives them the mandatory powers of assisting him in every matter without restriction, including the matters and tasks of ruling. After Abu Bakr became the Khaleefah, he appointed 'Umar ibn al-Khattab as an assistant to him. His assistance to him was evident.

Once 'Umar held the post of the Khilafah, 'Uthman and 'Ali were 'Umar's assistants, but they did not appear to carry out any role of assistantship to 'Umar in the matters of ruling. Their situation was similar to that of Abu Bakr and 'Umar with the Messenger of Allah (saw). At the time of 'Uthman, 'Ali and Marwan ibn al-Hakam were his two assistants. However 'Ali was unhappy about some affairs, so he remained distant. However, Marwan ibn Al-Hakam was quite evident in assisting 'Uthman in the tasks of ruling.

If the delegate assistant was honest, he would then be of great advantage to the Khaleefah. He would remind him of every thing good and help him in its execution. It was narrated from 'Ayesha

(ra), she said: The Messenger of Allah (saw) said:

«إذا أراد الله بالأمير خيراً جعل له وزير صدق، إن نسي ذكَّره، وإن ذكر أعانه. وإذا أراد الله به غير ذلك جعل وزير سوء، إن نسي لَم يذكِّره، وإن ذكر لَم يعنه»

"If Allah wished something good to the ameer he would make for him an honest wazir. When he forgets something, he would remind him, and if he remembered it he would help him in it. If Allah wished to him something else, he would make for him a bad wazir. When he forgets something, he would not remind him, and if he remembered it he would not help him in it." [Ahmad, Abu Dawud, Bayhaqi, Ibn Hibban]

It is narrated by Ahmad. An-Nawawi said it is of sound transmission. Al-Bazzar narrated it through transmission described by Al-Haythami saying that its narrators are trustworthy.

By examining the work of the assistants during the time of the Messenger (saw) and the time of *Khulafa'a Rashidoon*, we find that the assistant might be assigned to specific issues, where he is entitled to general supervision. He might also be appointed to have general overview in all the issues. He can also be appointed to a (certain) place where he is entitled to general supervision, as well as in various places with overall general supervision. It has been narrated by al-Bukhari and Muslim through Abu Hurairah, he said:

«بعث رسول الله ﷺ عمر على الصدقة»

"The Messenger of Allah (saw) sent Umar as responsible for sadaqah." [Muslim & Bukhari]

Ibn Khuzaymah and Ibn Hibban reported:

«أن رسول الله ﷺ حين رجع من عمرة الجِعرانة، بعث أبا بكر على الحج»

"When the Messenger of Allah (saw) returned back from the umrah of Ja'ranah, he sent Abu Bakr in responsibility for the hajj."

This means Abu Bakr and Umar (ra), the two assistants of the Messenger of Allah (saw), were charged with general examination in specific tasks at the time of the Messenger of Allah (saw), though they were two assistants (wazirs) who were appointed with general supervision and representation, as is required by the department of deputyship. This was the case of Ali and Uthman at the time of Umar. Even at the time of Abu Bakr, the assistantship of Umar to Abu Bakr was evident in the general examination and deputyship, to the point that some of the *sahabah* said to Abu Bakr: "We do not know who is the Khaleefah? Is it Umar or you?" Yet, Abu Bakr appointed Umar in the post of judiciary during some periods, as it is reported by al-Bayhaqi through a narration which was corroborated by al-Hafiz.

Thereupon, it is understood from the *Seerahh* of the Messenger (saw) and the *Khulafa'a Rashidoon* after him that the assistant is entrusted with the general examination and deputyship. However, it is allowed that the assistant be designated to a specific place or task, as the prophet (saw) did with Abu Bakr and Umar, and as Abu Bakr did with Umar. This is like appointing an assistant to follow up the northern regions while another to follow up the southern regions of the Khilafah state. The Khaleefah is allowed also to put the first assistant in the position of the second and the second in the position of the first. Besides he can direct one assistant to a specific task, and another to a different task, the way it is fit to help the Khaleefah. In such cases an assistant does not require a new designation; he just only needs transfer from one task to another. This is because he is entrusted originally with the general examination and deputyship; and all of these tasks are

within his appointment as an assistant. The assistant differs in this regard from the governor (wali), where the governor is entrusted with the general examination in one place without being transferred from it. In case he is transferred he would rather need new appointment, because the new place is not included in the first appointment. However, the assistant is entrusted with the general examination and deputyship; so he is allowed to be transferred from one place to another without the need of new deputyship, since he is in origin entrusted with the general examination and deputyship in all the responsibilities.

It is understood from all of this that the Khaleefah appoints his assistant representative for himself in all the regions of the state, with the general supervision of all the responsibilities. However, he is allowed to charge him with a specific responsibility, such as responsibility for the eastern districts, and another for the western districts, and so on. The importance of such arrangement is evident in the case of having more than one delegated assistant, so their responsibilities would not conflict.

Since, the Khaleefah will need more than one deputy assistant, particularly because of the big size of the state, and allowing each one of them to conduct tasks all over the state, this would create problems in discharging their responsibilities, due to the possibility of interference that results from the general supervision and represenatation, which each one of them has.

Therefore, we adopt:

In terms of appointment: the assistant is entrusted with the general supervision and representation, all over the state.

In terms of action: he is charged with a responsibility in part of the state. This means the Khilafah is divided into states (wilayaat) among the delegated assistants. One assistant would help in the east, while the other in the west, a third in the north, and so on.

In terms of transfer: the assistant is transferred from one place to another and from one responsibility to another without the need of new deputyship. He is rather transferred based on his first deputyship, for the origin of his deputyship is being a delegated assistant that covers all responsibilities.

The conditions of the delegated assistant

The delegated assistant should meet the conditions as those required for the Khaleefah's post, i.e. to be male, free, Muslim, mature, sane and just. In addition to this, the assistant should be from the people of competence in what is assigned to him in terms of duties delegated to him.

Evidences for these conditions are the same as those of the conditions of the Khaleefahs post because the work of the delegated assistant is part of ruling; therefore he should be male, for the Messenger of Allah (saw) said:

«لن يفلح قوماً وَلّوا أمرهم امرأة»

"**People who appoint a woman to run their affairs shall never succeed."**

Narrated by al-Bukhari on the authority of Abi Bakra. He must also be free, for the slave does not have authority over his own affairs, thus he cannot run other people's affairs. He should also be mature, for the Messenger of Allah (saw) said:

«رفع القلم عن ثلاثة عن النائم حتى يستيقظ، وعن الصبي حتى يبلغ، وعن المعتوه حتى يبرأ»

"Three types of people are exempted from accountability, the one who sleeps until he wakes up, a child until he reaches the age of puberty and the insane until he is cured," [Abu Dawud]

He also should be sane; for in the same *Hadith*, the Messenger of Allah (saw) said:

«وعن المعتوه حتى يبرأ»

"And the insane until he is cured." [Abu Dawud]

And in another narration the *Hadith* States

«وعن المجنون المغلوب على عقله حتى يفيق»

"…about the one whose mind is overpowered until he regains his mind."

The *Mu'awin* should also be just, for Allah (swt) has made it a condition in testimony. He (swt) says:

﴿وَأَشْهِدُوا ذَوَى عَدْلٍ مِنْكُمْ﴾

"And seek the witness of two just men from amongst you" - [TMQ; 65:2]

Therefore, there is greater reason to oblige justice from the assistant of the Khaleefah. The *Mu'awin* should also be from the competent people in the duties of ruling. This is so as to enable him to assist the Khaleefah in shouldering the responsibilities of the Khilafah and the responsibility of rule and authority.

The responsibilities of the delegated assistant

The responsibility of the delegated assistant is to submit to the Khaleefah all the work he intends to perform. He then reports to the Khaleefah what he has executed in terms of decisions and what he has discharged in terms of management and appointment, so that the assistant would not become like the Khaleefah in his powers. Therefore, his job is to submit his review and then execute it, unless the Khaleefah stops him from doing so.

The evidence for this is the nature of the *Mu'awin* as a deputy of the Khaleefah in the issue designated to him. A deputy acts on behalf of the person who appoints him as his deputy. Thus he does not become independent from the Khaleefah, but rather reviews with him every action just as 'Umar did when he was *wazir* to Abu Bakr, whereby he would review with Abu Bakr what he intended to perform, then execute it accordingly. Reviewing with the Khaleefah does not necessarily mean that he needs to ask for his permission in every single detail, for this contradicts the nature of the *Mu'awin*. It rather means discussing the matter with him, for example the need of appointing a capable *wali* to one of the provinces or dealing with the complaints of people regarding food shortage in the market, or any other State affairs. He may also submit a matter to him, in the form of a presentation, which would be sufficient for the *Mu'awin* in the future to carry out the matter with all its details, without the need for permission to act. However, if the Khaleefah issues orders to stop the carrying out of any matter, then it should not be executed. Hence, the presentation is simply the presentation of a proposal and the consultation with the Khaleefah about it; and it does not mean seeking permission to carry out the task. The *Mu'awin* can execute the task in question as long as the Khaleefah does not stop him from doing so.

The Khaleefah should review the actions of the *Mu'awin* and his management of affairs, in order to approve what is right and redress what is wrong. This is so because the management of the *Ummah's* affairs is commissioned to the Khaleefah and discharged

according to his own *ijtihad*. The evidence for this is the *Hadith* of responsibility over the subjects where the Messenger of Allah (saw) said:

«الإمام راعٍ وهو مسؤول عن رعيته»

"**The Imam is a guardian and he is responsible over his subjects."** [Bukhari, Ahmad, Bayhaqi]

Therefore, the Khaleefah is entitled to the task of government and he is responsible over his subjects, whereas the delegated *Mu'awin* is not responsible over subjects, but he is merely responsible for his own actions. The responsibility over the subjects is confined to the Khaleefah alone. Therefore, the Khaleefah is obliged to review the actions of the *Mu'awin* and his performance in order to fulfill his duty towards his subjects. Aside from this, the delegated assistant can sometimes make errors, and the Khaleefah has to redress such errors, so he has to review all the assistant's actions. Therefore, it is for these two reasons: fulfilling responsibility towards his subjects and redressing potential errors made by the delegated assistant, that the Khaleefah is obliged to review all of the *Mu'awin*'s actions.

If the delegated assistant decides upon a matter and the Khaleefah approves of it, the *Mu'awin* can then execute it without any alterations. If the Khaleefah objects to what the *Mu'awin* has executed, then in this case the matter will be examined. If the *Mu'awin* has correctly carried out a verdict or if he has spent some funds in the correct areas or in certain projects then the *Mu'awin*'s opinion comes into force, for, in principle, it is the Khaleefah's opinion, and the Khaleefah has no right to redress what the *Mu'awin* has executed in terms of rules he executes or funds he has spent. However, if the *Mu'awin* had performed other types of actions, such as the appointment of a *Wali* or the preparation of an army, the Khaleefah has the right to reverse the *Mu'awin*'s decision and enforce his own and nullify the *Mu'awin*'s actions. This is

because the Khaleefah has the right to redress his own actions so he has the right to redress the actions of his assistant.

This is a description of the way which the *Mu'awin* follows in performing his actions and of the way which the Khaleefah follows in reviewing the *Mu'awin*'s actions. It is derived from what sort of actions the Khaleefah is allowed to redress and what actions he is not allowed to redress, because the actions of the delegated *Mu'awin* are considered as actions of the Khaleefah. As an explanation for this, it is allowed for the delegated assistant to rule by himself and to appoint rulers as it is allowed for the Khaleefah; This is so, because the conditions of ruling have been conferred to him. He is also entitled to investigate complaints or to deputize someone to do so, because the conditions of complaints have been verified for him. He is also entitled to take charge of Jihad by himself, or appoint someone to do so, for the conditions of war have been verified for him. He is entitled to execute matters he has decided or to deputize someone to execute them on his behalf, for the conditions of voicing an opinion and management are conferred to him. However, this does not mean that whatever the *Mu'awin* performed can't be reversed by the Khaleefah, as long as he had been briefed about it. It rather means that he possesses the same powers as the Khaleefah, but he acts on his behalf and not independent of him. Therefore, the Khaleefah is entitled to disagree with the *Mu'awin* and redress what has been executed or reverse any of his actions, bearing in mind that this applies only to the sort of actions which the Khaleefah can redress of his own actions. If the *Mu'awin* had executed a rule correctly or spent funds in the right areas then the Khaleefah's objections would carry no weight and the *Mu'awin*'s decision would be executed. This is because in principle, it is the Khaleefah's own decision and in such cases he himself cannot reverse his decision or nullify what he himself had executed. Hence, he can not reverse his *Mu'awin*'s action. However, if the *Mu'awin* has appointed a *Wali*, an administrator, an army commander or any other appointee or if he has laid down an economic strategy, a military plan or an industrial

program or any similar undertaking, then the Khaleefah is allowed to nullify it. This is because, although they are considered as being the Khaleefah's opinions they fall under the category of decisions which the Khaleefah is entitled to redress even when done by himself. Accordingly he can do likewise with his *Mu'awin*'s decisions. So in this category, it is allowed for the Khaleefah to nullify the actions of the *Mu'awin*. The basic rule concerning this would be as follows: any action that the Khaleefah is allowed to redress of his own actions, he is entitled to redress in a like manner if performed by his *Mu'awin*; whereas any action the Khaleefah cannot redress, he is also not allowed to redress this action if performed by his *Mu'awin*.

The delegated *Mu'awin* is not designated to any particular department of the administration system, like the education department for example, because those who take charge of the administration matters are civil servants and not rulers; whilst, the delegated assistant is a ruler, not a civil servant. His responsibility is to take charge of the affairs, rather than performing the actions carried out by civil servants.

This is the reason why he does not run the administrative matters. It does not mean however that he is prevented from carrying out any administrative action; rather he is not confined to administration functions but is given a general responsibility.

Appointment and dismissal of the delegated assistants:

The delegated assistant is appointed and dismissed by the command of the Khaleefah. At the death of the Khaleefah, the term of the delegated assistants expires, and they do not continue in their post except during the term of the provisional ameer. After that they need new appointment from the new Khaleefah so as to continue in their responsibility. They do not need a decision of dismissal because their authority would eventually expire by the

death of the Khaleefah who took them as his assistants.

3. Executive Assistants (*Mu'awin ut-Tanfeedh*)

Mu'awin-ut-Tanfeedh is the *wazir* whom the Khaleefah appoints to be his assistant in the execution, follow up and implementation of his orders. He is the intermediary between the Khaleefah and the various State departments, the subjects and the foreign office on the other side. He conveys messages from the Khaleefah on one hand and on the other hand; so he is an assistant in executing orders and not authorized over them or entrusted with them. His work is therefore administrative and not ruling, and his department is a tool used to execute what the Khaleefah issues to the internal and foreign offices and to submit to him all that comes to him from these offices. His department acts as an intermediary between the Khaleefah and others, where it conveys to them on his behalf and conveys to him from them.

The executive assistant was called secretary (al-Katib) at the time of the Messenger of Allah (saw) and the Khulafa'a *rashidoon*. Then he became known as the keeper of the *deewan* of letters or correspondence, and then it was decided to call him the secretary of composition or the keeper of the deewan of composition. Finally the jurists called him the executive assistant (*wazir ut-tanfeedh).*

The Khaleefah is a ruler, whose duties include ruling, execution, and looking after people's affairs. Carrying out of ruling, execution and guardianship require administrative actions. This necessitates the setting up of a special department that works closely with the Khaleefah to manage tasks that help him carry out the Khilafah's duties. Thus an executive assistant is required, to be appointed by the Khaleefah to run administrative affairs not the affairs of ruling. He does not perform any ruling duties like the delegated assistant. He is not allowed for example to appoint a *Wali* or an '*Amil*, nor manage people's affairs. His duties are merely administrative, i.e. to

execute the ruling orders and the administrative tasks issued by the Khaleefah or the delegated assistant. This is why he is known as the executive assistant. Jurists used to call him '*wazir tanfeedh*' which simply means *Mu'awin-un-Tanfeedh*, on the basis that the word *wazir* is linguistically used to mean 'the assistant.' They said that this *wazir* is an intermediary between the Khaleefah, the subjects and the *Wali*s, who conveys the orders issued by him, executes his rules, informs about the appointment of *Wali*s, and about the preparation of task forces and armies stationed at the frontiers. He also submits to the Khaleefah whatever comes from such offices and informs him of all new matters that may arise so that he can implement whatever the Khaleefah may order him to. This makes him an assistant in executing commands and not in charge over them, or entrusted with them. He is similar to the head of the *deewan* of the head of the state at the present time.

Since the executive assistant is linked directly to the Khaleefah just like the delegated assistant, and he is part of the Khaleefah's entourage. Besides his responsibility is in contact with the ruler (Khaleefah) and requires pursuance with the Khaleefah and meeting with him in isolation at any time at day and night, a matter that disagrees with the conditions of the woman according to the divine rules. Therefore, the executive assistant has to be man. In addition the executive assistant cannot be a disbeliever; he must rather be a Muslim, for he is part of the Khaleefah's entourage. This is because Allah (swt) says:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا لاَ تَتَّخِذُوا بِطَانَةً مِنْ دُونِكُمْ لاَ يَأْلُونَكُمْ خَبَالاً وَدُّوا مَا عَنِتُّمْ قَدْ بَدَتْ الْبَغْضَاءُ مِنْ أَفْوَاهِهِمْ وَمَا تُخْفِي صُدُورُهُمْ أَكْبَرُ﴾

"O you who believe; do not take for intimates others than your own folk, who would spare no pains to ruin you; they love to hamper you. Hatred is revealed by (the utterance of) their mouths, but that which their breasts hide is greater." [TMQ 3: 118]

The prohibition of taking a non-Muslim as part of the Khaleefah's entourage is very clear in the verse. Therefore the executive assistant cannot be a *Kafir* but must be Muslim for he is directly connected to the Khaleefah and not separate from him, just like the delegated assistant. The executive assistants can also number more than one according to the need and according to the work he communicates between the Khaleefah and others.

As for the areas in which the *Mu'awin at-Tanfeedh* acts as an intermediary between the Khaleefah and others, these are four:

1) The international affairs, whether the Khaleefah discharges them directly, or he appoints a foreign department that takes charge of them.
2) The army.
3) The state organisations other than the army.
4) Relations with the citizens.

These are the types of duties, which the executive assistant carries out. Since he is an intermediary between the Khaleefah and others, he would be considered as a liaison department who reports from the Khaleefah and reports to him. By acting as such he follows up what is required of the State departments' action.

The Khaleefah is the actual ruler. He is the one who deals with ruling, execution and the management of people's affairs by himself. Therefore he is in constant contact with the ruling apparatus, international affairs and the *Ummah*. He enacts laws, takes decisions, carries out actions of caring and looks at the performance of the ruling apparatus and whatever obstacles it may face and whatever needs it requires. He is also informed of any demands, complaints and matters that come from the *Ummah*, and he follows up the international activities as well. Therefore, based on the nature of these actions, the *Mu'awin at-tanfeedh* acts as an intermediary relating to them, i.e. he conveys messages to the Khaleefah and conveys orders from him. Since what is issued by

the Khaleefah to the different departments and what comes to him from them needs following up in order to be implemented, the executive assistant needs to carry out this follow up for insuring the execution to be satisfactorily completed. He would carry out a follow up with the Khaleefah and with the State departments and would not stop carrying out this follow up, unless the Khaleefah specifically demanded so. In this case he has to obey his orders and stop the follow up, because the Khaleefah is the ruler and his order has to be implemented.

With regards to the matters related to the army and the international relations, these are generally confidential and are specific to the Khaleefah. Therefore the executive assistant does not follow up the execution of these matters nor pursue their execution, unless the Khaleefah requests him to do so in which case he will follow up only the matters which the Khaleefah demanded and not any others.

With regards to the *Ummah*; in matters of looking after her affairs, fulfilling her demands and removing unjust actions from her, these matters are for the Khaleefah to deal with the one who is appointed as a deputy to him. They are not a mandate for the executive assistant, so he does not follow them up except for those issues which the Khaleefah requests him to do so. His action in their regard is simply execution and not following up. All this depends on the nature of the actions which the Khaleefah carries out and accordingly the nature of the *Mu'awin ut-tanfeedh* actions.

As examples of the actions of the executive assistant at the time of the Messenger (saw) and the *Khulafa'a rashidoon* (where this assistant was called secretary at that time):

1. **International relations**, and the examples are:

- The Hudaybiyah treaty as narrated by al-Bukhari through al-Musawwar and Marwan. It says:

« فدعا النبي صلى الله عليه وسلم الكاتب... »

"So the prophet (saw) called the secretary (writer)…" [Bukhari, Abdur Razzaq]

Abu Yusuf also narrated in the book of Kharaj, he said:

« وحدثني محمد بن اسحق والكلبي، زاد بعضهم على بعض في الحديث، وفيه: وقال: اكتبوا... »

"Mohammad ibn Ishaq and al-Kalbi informed me, some others added in the hadith saying: He sad: Write (plural)..", without mentioning the name of the writer.

Ibn Kathir narrated it, he said:

« قال ابن اسحق قال الزهري... ثم دعا رسول الله صلى الله عليه وسلم علي بن أبي طالب فقال: أكتب... »

"Ibn Ishaq said az-Zuhri said…then the Messenger of Allah (saw) called upon Ali ibn Talib and said: Write (singular)…"

Abu Ubayd narrated it in the book of al-Amwal from ibn Abbas, where he said:

«... فقال لعلي: أكتب يا علي..»

"….and he said to Ali: O Ali, write…" [Ahmad]

Al-Hakim narrated it from ibn Abbas, and az-Zahabi authenticated it and approved it, saying:

« أكتب يا علي... ...»

"…..O Ali, write…"

The text of this peace treaty is well known, and does not need to be mentioned here.

- The letter of the Messenger (saw) to Heraclius is narrated by the jamaa'ah (of muhadditheen) excluding ibn Majah. The wording of the hadith as narrated by al-Bukhari from ibn Abbas from Abu Sufyan:

« بسم الله الرحمن الرحيم، من محمد عبد الله ورسوله إلى هرقل عظيم الروم، سلام على من اتبع الهدى، أما بعد، فإني أدعوك بدعاية الإسلام، أسلم تسلم يؤتك الله أجرك مرتين، فإن توليت فإن عليك إثم الأريسيين، ويا أهل الكتاب تعالوا إلى كلمة سواء بيننا وبينكم، أن لا نعبد إلا الله، ولا نشرك به شيئاً، ولا يتخذ بعضنا بعضاً أرباباً من دون الله، فإن تولوا فقولوا اشهدوا بأنا مسلمون »

"Bismillahir Rahmanir Rahim, from Mohammad, Abdullah and Messenger of Allah (saw) to Heraclius the leader of the Romans, peace is upon whoever follows the guidance. After that, I invite you to the da'wa of Islam; if you embrace Islam Allah will give your reward double. If you turned away then you are responsible about the sin of the Arisiyeen (meaning the Romans). O you people of the book, come forward to a

fair word between us and between you, that we do not worship save Allah, we do not associate partners with Him, and nor take each other as lords beside Allah. If they turned away say bear witness that we are Muslims." [Bukhari, Ibn Maja]

- The letter of Heraclius to the Messenger of Allah (saw) in response to his letter. Abu Ubayd reported in the book of al-Amwal from Bakr ibn Abdullah ibn Abdullah al-Muzni: "…And he wrote to the Messenger of Allah (saw) that he is Muslim, and sent him some dinars (money). The Messenger of Allah (saw) said when he read the letter:

« كذب عدو الله ليس بمسلم، ولكنه على النصرانية »

"He lies, the enemy of Allah, he is not Muslim, rather he is on Christianity."

Al-Hafiz said in al-Fath, the hadith is of authentic narration but disconnected (mursal) from Bakr.

- The letter written by people of Minbaj to Umar and his reply to them, where Abu Yousuf said in the book of al-Kharaj: "Abdul Malik ibn Jurayj told us from Amr ibn Shua'yb that the people of Minbaj – some enemies sailing on the sea – wrote to Umar ibn al-Khattab (ra): Allow us to enter your country as traders and impose upon us a tax of tenth. He said: Umar consulted with the companions of the Messenger of Allah (saw) regarding that, and they advised him to do that. Thus, they were the first people of war that paid the tenth."

2. **The army**, and some of its correspondences are:

- The letter of Abu Bakr to Khalid, in which he commands him

to travel to Ash-Sham. Abu Yousuf said in the book of Al-Kharaj: "Khalid wanted to take Al-Heerah as his centre. However the letter of Abu Bakr came to him in which he was commanded him to travel to Ash-Sham as reinforcement to Abu Ubaydah and Muslims…"

- The armies in Ash-Sham wrote to Umar asking him support, and he wrote to them: Ahmad narrated through narrators considered of the quality of the sound's narrators, and Abu Hatim ibn Habban through sound narration from Sammak, he said: I heard Iyadh al-Ash'ary said: "I attended al-Yarmuk when we were under five ameers: Abu Ubaydah ibn al-Jarrah, Yazeed ibn Abu Sufyan, Ibn Hasana, Khalid ibn Al-Waleed and Iyadh who was different to the narrator who spoke to Sammak. He said that Umar said: If it was a matter of fight, then seek the help of Abu Ubaydah. He said: So we wrote to him that death raged against us and we sought his support. He wrote to us: I received your letter in which you seek my support. I direct you to the one who is of stronger support and his soldiers more ready; he is Allah (azza wajal), so seek His help, because Muhammad (saw) was given victory at Badr with less than your army. Once this letter of mine reaches you fight against them and do not revise with me. He said: So we fought against him and thus defeated them. We killed them for four *farsakh*.."

- The army of Ash-Sham wrote to Umar ibn Al-Khattab "When we meet the enemy and see them cover their weapons with silk we find terror in our hearts. Umar wrote to them: You do the same, so cover your weapons with silk", as mentioned by Ibn Taymiyyah in Al-Fatawa.

3. **The state's organisations other than the army**. These are some of its correspondence.

- The letter of the Messenger (saw) to Mu'adh regarding the

tenth: Yahya ibn Adam narrated in the book of Al-Kharaj about ruling, he said: "The Messenger of Allah (saw) wrote to Ma'adh in Yemen:

« فيما سقت السماء أو سقي غيلاً العشر، وما سقي بالغرب فنصف العشر »

"The tenth is due in whatever was irrigated with rain or with sizable water; and half of the tenth in whatever is irrigated with bucket."

And Ash-Sha'bi narrated the like of it.

- The letter of the Messenger of Allah (saw) to Al-Mundir ibn Sawa regarding the head tax (jizyah). Abu Yousuf mentioned in the book of Al-Kharaj from Abu Ubaydah, he said:

« كتب رسول الله صلى الله عليه وسلم إلى المنذر بن ساوى أن من صلى صلاتنا، واستقبل قبلتنا، وأكل ذبيحتنا، فذلك المسلم، له ذمة الله وذمة رسوله، فمن أحب ذلك من المجوس فهو آمن، ومن أبى فعليه الجزية »

"The Messenger of Allah (saw) wrote to Al-Mundir ibn Sawa that **whoever prayed our prayer, turned to our qiblah, ate our slaughtered meat, then this the Muslim, and he is entitled with the protection of Allah and His Messenger. Whoever of the Majus (fire worshippers) liked that then he is safe, and whoever rejected, then he has to pay the jizyah"**.

- The letter of Abu Bakr to Anas regarding the duty of Sadaqa, when he sent him to Bahrain: Al-Bukhari narrated from Anas, "that Abu Bakr (ra) wrote to him regarding the duty of Sadaqah which Allah and His Messenger commanded…"

- The letter of Umar to Amr at the year of Ramadah (famine), and the reply of Amr to him. Ibn Khazeemah narrated in his authentic (saheeh) book, and Al-Hakim who said it is sound on the terms of Muslim, al-Bayhaqi in the Sunan, and Ibn Sa'ad in the Tabaqaat from Zayd ibn Aslam from his father, he said: "When the year of Ramadah took place, and the land of the Arab suffered of drought, Umar ibn Al-Khattab wrote to Amr ibn Al-Ass: From Abdullah, ameer al-Mu'mineen to Amr ibn Al-Ass. By Allah you do not bother if you and the people on your side became fat at the time I and the people on my side become slim. Help us! Amr wrote: Peace be upon you. I am at your service; I am at your service. Camels are coming to you, where its first is with you and its last is with me; though I hope to find a way to carry the supplies by sea."

- The letter of Mohammad ibn Abu Bakr to Ali regarding the apostates, and his reply to him. Ibn Abi Sheebah reported from Qaboos ibn al-Mukhariq from his father, he said: "Ali sent Mohammad ibn Abu Bakr as an ameer over Egypt, so he wrote to him regarding some *zindiq* (apostates), some of them worship the sun and moon, and some of them worship something else, and some of them claim that they are Muslim. He wrote to him ordering him regarding the *zindiq* to kill the one who claims to be Muslim, and leave others to worship whatever they like."

4. **Letters addressed directly to the citizens,** some of which are:

- The letter of the Messenger (saw) to the people of Najran. It is narrated by Abu Dawud from Al-Suddi from ibn Abbas. Al-Mundhiry said: What Al-Suddi heard from Ibn Abbas needs examination. Abu Ubayd narrated it in Al-Amwal

from Abi Al-Maleeh Al-Hadly, which says at its end: **"Uthman ibn Affan and Mu'ayqeeb testified to that, and wrote".** Abu Yousuf narrated it in Al-Kharaj, and he mentioned the scripter was Al-Mugheerah ibn Abi Shu'bah. Then Abu Yousuf mentioned the letter of Abu Bakr to them, and the scripter was Al-Mugheerah. Then he mentioned the letter of Umar and the scripter is Mu'ayqeeb, and then the letter of Uthman to them and the scripter is his associate (mawla) Humran, then the letter of Ali and the scripter is Abdullah ibn Rafi'.

- The letter of the Messenger (saw) to Tameem Al-Dari. Abu Yousuf mentioned in al-Kharaj, he said:

« قام تميم الداري وهو تميم بن أوس – رجل من لخم – فقال يا رسول الله، إن لي جيرة من الروم بفلسطين، لهم قرية يقال لها حبرى، وأخرى يقال لها عينون، وإن فتح الله عليك الشام فهبها لي، فقال: هما لك. قال: فاكتب لي بذلك، فكتب له: بسم الله الرحمن الرحيم، هذا كتاب من محمد رسول الله لتميم بن أوس الداري، أن له قرية حبرى وبيت عينون قريتها كلها، وسهلها وجبلها وماؤها وحرثها وأنباطها وبقرها ولعقبه من بعده، لا يحاقه فيها أحد، ولا يلحد عليهم أحد بظلم، فمن ظلم وأخذ منهم شيئاً فإن عليه لعنة الله والملائكة والناس أجمعين. وكتب عل »

"Tameem Al-dary, who is Tameem ibn Aws, a man from Lakham, and said; O Messenger of Allah; I have neighbors from the Romans in Palestine. They have a village called Habra, and another one called 'Aynoon. If

> **Allah conquered Ash-Sham for you, please grant those (two villages) to me. He said: They are yours. He said; so write regarding that to me. He wrote to him: Bismillahir-rahmanir-Rahim. This is a letter from Mohammad, the Messenger of Allah, to Tameem ibn Aws Al-Dary, that he has the village of Habra and the village of Bayt 'Aynoon, all of it, its plain, mountain, water, arable land, Nabateans and cows, and to his offspring after him. No one would challenge him regarding his right over them, and nor any one would deviate from their right unjustly. Whoever did so and took any thing from them he deserves the curse of Allah, the Angels and all mankind. Ali has written."**

When Abu Bakr took authority he wrote to them a letter regarding that says: "Bismillahir Rahmanir Raheem. This is a letter from Abu Bakr, the trustee of the Messenger of Allah (saw) that has taken authority in the land. He writes it to the Dary, that no one would undermine what they possess of the village of Habra and 'Aynoon. Whoever listens and obeys Allah, he must not undermine any thing of them. My chief has to set up the two doors on them, and protect them from the corrupters."

The Khaleefah has the right to appoint secretaries as many as he needs in his correspondence. This even becomes obligatory if the duty cannot be performed without their appointment. The authors of the Seerahh mentioned that the Messenger of Allah (saw) had about twenty scripters. Al-Bukhari mentioned in his saheeh that the Messenger of Allah (saw) ordered Zayd ibn Thabit to learn the language of the Jews so as to read to the prophet (saw) when they write to him. So, he learnt it in fifteen days. Ibn Ishaq narrated from Abdullah ibn Al-Zubayr:

« أن رسول الله صلى الله عليه وسلم استكتب عبد الله ابن الأرقم بن عبد يغوث، وكان يجيب عنه الملوك.. »

"That the Messenger of Allah (saw) dictated to Abdullah ibn Al-Arqam ibn Abd Yaghooth, and he used to reply the kings on his behalf…"

Al-Bayhaqi narrated from Abdullah ibn Umar (ra), he said:

« أتى النبي كتاب رجل، فقال لعبد الله بن الأرقم: أجب عني، فكتب جوابه، ثم قرأه عليه فقال: أصبت وأحسنت اللهم وفقه»

"A letter from a man came to the prophet (saw), so he said to Abdullah ibn Al-Arqam: Reply on my behalf. He wrote his reply and then read to the prophet (saw). He said: You did the right and was proficient; may Allah give him success".

Muhammad ibn Sa'ad reported from Ali ibn Muhammad Al-Mada'ini through his narration that Muhammad ibn Maslamah was the one who once wrote a letter to a delegate, based on an order from the Messenger of Allah (saw); Ali ibn Abi Talib was the one who used to write the treaties when the Messenger (saw) made treaties, and write peace when he made peace. Mu'ayqeeb ibn Abi Fatimah was responsible for his stamp. Al-Bukhari reported in the history through Muhammad ibn Bashshar from his grandfather Mu'ayqeeb, he said:

« كان خاتم رسول الله صلى الله عليه وسلم من حديد ملوّن عليه فضة كان بيدي. وكان المعيقيب على خاتم رسول الله صلى الله عليه وسلم»

"The seal ring of the Messenger of Allah (saw) was made of coloured iron, with silver on it, and it was with me; and Mu'ayqeeb was responsible for the stamp of the Messenger of Allah (saw)".

4. The Governors (*Wali*'s)

The *Wali* (governor) is the person whom the Khaleefah appoints as ruler and *Ameer* over a *Wilayah* (province) of the Khilafah State.

The territories which the Islamic State rules over are divided into provinces and each province is known as *Wilayah*. The *Wilayah* is in turn be divided into districts and each district is known as *I'mala*. The person appointed over the *Wilayah* is known as the *Wali*, or an *ameer*, and the person appointed for the *I'mala* is known as the '*Amil* or the *hakim* (ruler).

The 'Imalah is divided into administrative units, each is known as a metropolis (*Qasabah*), and the *Qasabah* is divided into smaller administrative units, each known as a quarter (*Hayy*). The leader of the *Qasabah* as well as the *Hayy* is known as manager; and his work is administrative.

The *Wali* is therefore a ruler, for the *Wilayah* means the ruling. In *Al-Muheet* dictionary, it has been defined as being the *Imara* (leadership) and the authority. Since they are rulers, then it is stipulated they fulfill the same conditions of the ruler. Thus the Wali must be male, free Muslim, mature, sane and just, as well as competent in his responsibility. He requires an appointment by the Khaleefah or by whoever is appointed on his behalf. Therefore the *Wali* can only be appointed by the Khaleefah. The origin of the *Wilayah* or the *Imara*, i.e. the *Walis* or the *Ameers* goes back to the actions of the Messenger of Allah (saw). It has been confirmed that he (saw) appointed *Walis* over the countries and that he gave them the right to rule over the provinces. He (saw) appointed Mu'adh Ibn Jabal over Al-Janad, Ziad Ibn Labeed over Hadhramut and Abu Musa Al-Ash'ari over Zabeed and Aden.

The Messenger of Allah (saw) used to select his *Walis* from among those who were fit to rule, and those who had knowledge and were

known for their piety. He would select them from among those who were experts in their job, and who would fill people's hearts with *Iman* and respect for the State. Sulayman Ibn Barida reported on the authority of his father that he said:

«كان رسول الله صلى الله عليه وسلم إذا أمر أميراً على جيش أو سَرية أوصاه في خاصته بتقوى الله. ومَن معه مِن المسلمين خيراً»

"Whenever the Messenger of Allah (saw) appointed an *Ameer* over an army or an expedition, he advised him to fear Allah and to be good to the Muslims who accompany him." [Muslim]

Since the *Wali* is in fact an *Ameer* over his *Wilayah*, the *hadith* would then apply to him as well.

As for the dismissal of the Wali, this would be up to the Khaleefah, or if the majority of people in his *Wilayah* or their representatives showed discontent towards him. Therefore, we adopt that a wilayah council is elected from the people of the wilayah for two purposes: Helping the wali through explaining to him the reality of their wilayah for they are of its inhabitants and know better than him. So, he uses their information to perform his responsibility properly. The second is to take if necessary the opinion of the council regarding the work of the wali. If the majority of the council complained of his performance the Khaleefah would remove him. This is because the Messenger (saw) removed Al-Alaa ibn Al-Hadrami, his ameer for Bahrain, because the delegate of Abdu Qays complained of him. The Khaleefah has also the right to dismiss the wali without any reason. The Messenger of Allah (saw) dismissed Mu'adh ibn Jabal from Yemen without any reason, and he (saw) removed Al-Alaa ibn Al-Hadrami, his *'Amil* over Bahrain, because the delegation of Abdu Qays complained about him. Umar ibn Al-Khattab used to dismiss the *Walis* with or without reason. He dismissed Ziad Ibn

Abi Sufyan without giving a reason, and he dismissed Sa'ad Ibn Abi Waqqas because people complained about him, and then said: 'I did not remove him because of incompetence or betrayal.' This proves that the Khaleefah reserves the right to remove the *Wali* whenever he wishes if the people living in his *Wilayah* filed a complaint against him.

There used to be two types of *Wilayah* in the early times: The *Wilayah* of *Salah* and the *Wilayah* of *Kharaj*. Therefore we find that history books use two terms in their reference to the *Wilayah* of *Ameers*: The first is the *Imara* over the *Salah* and the other the *Imara* over the *Salah* and the *Kharaj*. In other words the *Ameer* could either be appointed over both the *Salah* and the *Kharaj*, or over the *Salah* only or over the kharaj only. The word *Salah,* in the context of the *Wilayah* or the *Imara,* does not mean only leading the people in their prayer, but it means governing all their affairs except the funds. This is because the word *Salah* is used to mean ruling except for the levy of funds. Therefore, if the *Wali* had combined both the *Salah* and the *Kharaj*, his *Wilayah* would then be general (*Wilayah 'Amma*). If his *Wilayah* had been restricted to the *Salah* or the *Kharaj*, his *Wilayah* would then be specific (*Wilayah Khaassa*). Either way, this would be left to the Khaleefah's own arrangements, as he reserves the right to restrict the *Wilayah* to the *Kharaj*, or to the judiciary, or he could confine the *Wilayah* to other than the *Kharaj*, the judiciary and the army. He could do what he deems best for the running of the State or the *Wilayah*. This is because *Shari'ah* has not determined for the *Wali* certain duties, and it is not obliged that he should perform all the duties of ruling. It has, however, determined that the *Wali's* or the *Ameer*'s duties be ruling and authority, that he is the deputy of the Khaleefah, and that he should be an *Ameer* over a specific area. All this is derived from the actions of the Messenger of Allah (saw).

However, *Shari'ah* entitles the Khaleefah to appoint a *Wali* as either a general *Wilayah* (*'Amma*) or a specific one (*Khaassa*) according to his own discretion, and all this is reflected in the

actions of the Messenger of Allah (saw). The Messenger of Allah (saw) appointed *Walis* with general responsibilities (*Wilayah 'Amma*), such as when he appointed 'Amru ibn Hazm over Yemen; and he appointed *Walis* with specific functions (*Wilayah Khaassa*), such as when he appointed Ali bin Abi Talib over the judiciary in Yemen. It was mentioned in the *Seerahh* of ibn Hisham that the Messenger of Allah (saw) appointed Farwa ibn Musayk over the tribes of Murad, Zubair and Midhaj. And he sent Khalid ibn Sa'eed ibn Al-'Aas with him as *Wali* over the *Sadaqa*. It also mentioned that the Messenger of Allah (saw) sent Ziad ibn Labeed al-Ansari as a *Wali* over Hadhramut and its *Sadaqat*. He also sent 'Ali ibn Abi Talib to Najran to collect their *Sadaqat* and the *Jizya*. He also sent him, as a judge over Yemen, as reported by Al-Haakim. In the book of Isti'aab it is mentioned that the Messenger of Allah (saw) sent Mu'adh ibn Jabal to al-Janad to teach the people about the Quran, the laws of Islam and to judge between them. He authorised him as well to collect the *Sadaqat* from the *'Amils* in Yemen.

Though the Khaleefah is allowed to appoint a wali with a general wilayah, and to appoint him with a special wilayah, however it was proved that at the time of the weakness of Abbasid Khulafa'a the general wilayah helped in the independence of the wilayat to the point nothing was left to the Khaleefah over them except calling his name in du'a and minting the money in his name. Thus, granting general wilayah caused harm to the Islamic state.

Since it is allowed to appoint the wali with a general authority as well as with a specific authority; and since the general authority of the wali might lead to harm and great danger to the state, therefore we adopt giving the wali a specific authority in other than the areas that help the wali to separate from the sate if his taqwa declined. From examination we find the areas that strengthen the wali are the army, judiciary and the funds. Thus, these areas have to be separate from the wali and kept connected to the Khaleefah like any other organisation in the Khilafah state; i.e. they have to be

kept independent from the state.

The *Wali* should not be transferred from one *Wilayah* to another; he should be rather relieved first and then reappointed. This was clear from the actions of the Messenger of Allah (saw) where he used to remove the *Walis*. It has not been reported that he used to transfer a *Wali* from one place to another. Besides, the *Wilayah* is one of the types of contracts that are convened with explicit words. So within the contract of *Wilayah* over a province or a country, the area over which the *Wali* is to govern must be determined, and he would have the mandate of ruling as long as he is not removed by the Khaleefah; if he were not removed from that area he would remain a *Wali* over it. However if he were transferred to another place this would not remove him from his first position and nor would it make him a *Wali* over the new place. This is because his removal from the first place requires a clear word stating that he was removed from the *Wilayah* there; and to appoint him over the place where he had been transferred requires a new contract of appointment as a *Wali* specific to that place. This is why the *Wali* is not transferred from one place to another, but is relieved of his duties from one place and then given a new *Wilayah* over the new place.

The Khaleefah should make inquiries about the Walis' actions

The Khaleefah should inquire about the actions of the *Wali* and he should monitor them closely. He should do that directly or appoint someone who would check their state of affairs and carry out inspections. The *Mu'awin* is also allowed to monitor the actions of the *wali*'s in the *wilayat* he helps the Khaleefah in, and should review with the Khaleefah his findings about them, or the decisions he takes regarding them as was explained in the responsibilities of the delegated assistant. Thus, the Khaleefah would be aware about the status of the *wali*'s, and following their situation. As well he should also meet with all of them or some of

them from time to time and listen to the complaints of the subjects against them.

It has been confirmed that the Messenger of Allah (saw) used to examine the *Walis* when appointing them, as he did with Mu'adh and Abu Mousa. He used to explain to them how they should conduct their duties, as he did with 'Amr ibn Hazm. He also drew their attention to some important matters as he did with Aban ibn Sa'id when he appointed him *Wali* over Bahrain and said to him:

« استوص بعبد قيس خيراً وأكرم سراتهم »

"Look after Abd Qays and honour their leaders".

Likewise it has also been confirmed that he (saw) used to hold the *Walis* accountable, inspect their situation and listen to news brought to him about them. He (saw) would account the *Walis* concerning the revenue and the expenditure of their *wilayat*. Al-Bukhari and Muslim narrated on the authority of Abu Humaid Al-Sa'idi who said**:**

« أن النبي صلى الله عليه وسلم استعمل ابن اللُّتْبِيّة على صدقات بني سليم، فلما جاء إلى رسول الله صلى الله عليه وسلموحاسبه، قال: هذا الذي لكم، وهذه هدية أهديت لي. فقال رسول الله صلى الله عليه وسلمفهلاّ جلست في بيت أبيك وبيت أمك حتى تأتيك هديتك إن كنت صادقاً..الحديث»

"The Messenger of Allah (saw) appointed Ibn-l-Utbiyya as *'Amil* in charge of *Sadaqa* of Banu Saleem. When he returned back to the Prophet (saw) and he accounted him, he

said: "This is for you and (this is a gift) that was presented to me." So the Messenger of Allah (saw) said:"Why did you not remain in your father's and mother's home so that your gift comes to you if you said the truth."

'Umar used to closely monitor the *Walis*, and he appointed Muhammad Ibn Maslama to observe their state of affairs and inspect them. 'Umar used to gather the *Walis* during the *Hajj* season to review their performance and to listen to the complaints of the subjects about them, and he would also discuss with them the affairs of the *Wilaya's* and ask about their own conditions. It has been reported that 'Umar once said to the people around him: 'Would you say that my duty would be fulfilled if I appointed over you the best from amongst you, and ordered him to be just?' They said: 'Yes'. He said: 'No. Not until I had checked his performance, and seen whether or not he did what I had ordered him to do.'

'Umar was known to be strict when accounting the *Walis* and the *'Amils*. He would even remove some of them on just a suspicion without conclusive evidence, and he even used to remove a *Wali* on the slightest doubt that did not even reach the level of suspicion. He was asked about this one day and he said: 'It is easy to swap an *Ameer* for another so as to amend the people's affairs'. However, despite his strictness with them he used to give them a free hand and safeguard their reputation in ruling. He used to listen to them and consider their arguments; if he liked an argument he was not shy of showing his approval and conviction of it and of showering the '*Amil* with praise afterwards. One day news reached him about his *'Amil* over *Hums* Umayr Ibn Sa'ad who had said while over the pulpit of *Hums*: 'Islam will remain in formidable as long as the authority is strong. And the strength of the authority does not come about with the killing by the sword or the lashing by the whip, but with the judging by the truth and the upholding of justice.' Upon hearing this 'Umar said: 'I wish I had a man like Umayr Ibn Sa'ad to help me with the Muslims' affairs.'

Jihad

Jihad is the peak of Islam and the fundamental method defined by Islam to convey the message of Islam to the world. Conveying the Islamic *da'wa* is considered the main function of the Islamic State after implementing the rules of Islam internally.

Since Jihad is to fight for the sake of Allah in order to raise high the word of Allah; and since the fight needs an army and what it requires of preparing and forming of its leaders, chiefs of staff, its officers and soldiers. It also needs training, supplies and ammunitions. The army also needs weapons, which needs industry. Therefore, industry is one of the necessities of the army and the necessities of Jihad. This matter dictates industry in all factories of the state must be built on the basis of military industry.

Moreover, the stability of the internal situation strengthens the army in fighting. However, if the internal situation was not secured and stable, then this would preoccupy the army in controlling it before turning to Jihad. Even if it turned to Jihad, and the internal situation behind it became unsettled, then this would weaken the power of the army from continuing the fight.

The foreign affairs with other states are also centralized over conveying the Islamic da'wa.

Therefore, these four departments, namely the army, the internal security, the industry and foreign affairs can constitute one department headed by an ameer appointed by the Khaleefah, because it is linked to Jihad.

However, it is allowed to make these departments separate from each other. Thus, the Khaleefah appoints a manager for each one of them, and an ameer and a leader to the army. The Messenger of Allah (saw) used to appoint leaders over the army during the

expeditions without having any relation to them with industry, which the Messenger (saw) used to commission to others. This also applies to the internal security in terms of police, patrols and dealing with the highway robbers and thieves. This is the case regarding the foreign affairs, where the letters of the Messenger (saw) to the kings and rulers at his time give this indication.

The disconnection between these departments through a manager for each one of them is proved by the following:

1. The army

- The Messenger (saw) sent Zayd ibn Harithah as an ameer in Mu'tah, and he appointed the ameers that follow him if he was martyred. Ibn Sa'ad narrated that the Messenger of Allah (saw) said:

« أمير الناس زيد ابن حارثة، فإن قتل فجعفر بن أبي طالب، فإن قتل فليرتض المسلمون بينهم رجلاً فيجعلوه عليهم »

"The ameer of the people is Zayd ibn Harithah; if he was killed then the ameer is Ja'far ibn Abi Talib; and if killed the ameer is Abdullah ibn Ruwahah; and if killed let the Muslims choose one man from among them and make him their ameer."

Al-Bukhari narrated from Abdullah ibn Umar (ra) said: "The Messenger of Allah (saw) appointed in the expedition of Mu'tah Zayd ibn Harithah as ameer…" Al-Bukhari narrated from the hadith of Salamah ibn Al-Akwa': "I went in fight with Zayd, he was appointed ameer over us". Al-Bukhari and Muslim narrated from Abdullah ibn Umar (ra) said:

« بعث النبي صلى الله عليه وسلم بعثاً، وأمر عليهم أسامة بن زيد، فطعن بعض الناس في إمارته، فقال النبي صلى الله عليه وسلم : إن تطعنوا في إمارته فقد كنتم تطعنون في إمارة أبيه من قبل، وأيم الله إن كان لخليقاً للإمارة... »

"The Prophet (saw) sent an army and appointed Usamah ibn Zayd as an ameer over them. So some people defamed his leadership, so the prophet (saw) said: If you defame his leadership you defamed the leadership of his father before. By Allah! He is worthy of leadership…"

The *sahabah* used to call the army of Mu'tah the army of ameers. Muslim narrated from Ibn Bareedah, he said: "The Messenger of Allah (saw) used to when appointing an ameer over an army or an expedition to advise him…"

- Abu Bakr had appointed Khalid as a leader in the fight against the apostates and in the battle of Al-Yarmuk. Khaleefah said: "He gave Khalid ibn Al-Walid leadership over the people, and appointed upon the ansar specifically Thabit ibn Qays ibn Shammas, while Khalid was over all of them". Abu Bakr gathered the armies of Ash-Sham under the leadership of Khalid in Al-Yarmuk. Ibn Jarir said: "And he sent to him while he was in Iraq to come to Ash-Sham and be the ameer over the armies in it". And as Umar did when he gathered the armies of Ash-Sham under the leadership of Abu Ubaidah, Ibn 'Asaakir said: "And he was the first to name the ameer of the ameers in Ash-sham".

2. Internal security

Al-Bukhari narrated from Anas:

« أن قيس بن سعد كان يكون بين يَدَي النبي صلى الله عليه وسلم بمنزلة صاحب الشُرَطِ مِن الأمير »

"That Qays ibn Sa'ad used to be in front of the Prophet (saw) in the position of a policeman(bodyguard) for the ameer".

What is meant here is Qays ibn Sa'ad ibn Ubadah al-Ansari al-Khazraji. Al-Tirmidi narrated it:

« كان قيس بن سعد من النبي صلى الله عليه وسلم بمنزلة صاحب الشرطة من الأمير. قال الأنصاري: يعني مما يلي من أموره »

"Qays ibn Sa'ad used to be in front of the prophet (saw) in the position of the policeman(bodyguard) for the ameer. Al-Ansari said: It means one of the people who discharges his issues".

Ibn Habban expounded this hadith saying: "To be in the prophet's guard against the mushriks in his meeting when they enter".

It is narrated by Bukhari that the Messenger of Allah (saw) sent Ali ibn Ali Talib, who said: "The Messenger of Allah (saw) sent me, Al-Zubair and Abu Marthad, and each one of us was a horseman. He said: Set out till you reach Rawdat al Haj; Abu Uwanah said it is Haj(name of a town), and in another narration Khakh. There is a woman who has a letter from Hatib ibn Abi Balta'ah to the *mushriks* (polytheists); bring it to me. So we set out on top of our horses till we reached her at the place mentioned to us by the Messenger of Allah (saw). She was travelling on top of her camel. Hatib had written to the people of Makkah informing them of the

march of the Messenger of Allah (saw) towards them. We said: Where is the letter which you have? She said: I have no letter. We made her camel kneel, and sought it in its saddle but found nothing. My two friends said: We see no letter with her. I said: We have known that the Messenger of Allah (saw) does not lie. Then Ali swore: By the one in whose name oath is given! You have to give the letter otherwise I will strip you. She lent down over the middle knot of her belt, which she had seized with a garment, and pulled out the letter. They took it to the Messenger of Allah (saw)…..the hadith"

3. Industry

The Messenger (saw) ordered the manufacture of the catapult and the armored car. Al-Bayhaqi mentioned in the Sunan from Abu Ubaydah (ra), he said: "Then the Messenger of Allah (put siege around Tai'f, and erected the catapult against them for seventeen days". Abu Dawud reported in the *maraseel* (ahadith missing the name of the sahabi who narrated from the Messenger (saw)) from Makhool; "That the prophet (saw) erected the catapult against the people of Ta'if". Al-San'ani said in Subul-us-Salam that its narrators are reliable. The author of the Seerahh Halabiyyah said: "It is Salman al-Farisi (ra) who directed him to do this. He said: We in Persia erected catapults on top of the castles and hit our enemy. It is said that Salman (ra) made it with his own hands". Ibn Al-Qayyim reported in Zad Al-Ma'ad, and Ibn Hisham in the Seerahh from Ibn Ishaq: "Till when the day of destruction occurred near the wall of Ta'if, few people of the companions of the Messenger of Allah (saw) moved under an armored car and entered to the wall of Ta'if so as to burn it. Thaqeef sent against them rods of iron heated with fire, so they got out of it. Thaqeef hit them then with arrows and killed some of them".

Thus, Salman was the one who advised them about the catapult, and it is said that he made it with his own hands. This must have

been done by the command of the Messenger (saw). Analysing that in his saying in the Seerahh al-Halabiyyah "he directed him to it". This means he advised the Messenger (saw) of that. It is understood from these reports that military industries are from the responsibilities of the Khaleefah; and he seeks the help of whomever he likes to undertake them and organise them. These do need an ameer, rather a manager. Salman was not an ameer to the military industries, rather a manager to the catapult industry; and he could work with his own hands. Establishing military industries is compulsory, because striking fear is required in His (swt) saying:

﴿ وَأَعِدُّوا لَهُمْ مَا اسْتَطَعْتُمْ مِنْ قُوَّةٍ وَمِنْ رِبَاطِ الْخَيْلِ تُرْهِبُونَ بِهِ عَدُوَّ اللَّهِ وَعَدُوَّكُمْ وَآخَرِينَ مِنْ دُونِهِمْ لاَ تَعْلَمُونَهُمُ اللَّهُ يَعْلَمُهُمْ ﴾

"Make ready for them all you can of (armed) force and of horses tethered, that thereby you may dismay the enemy of Allah and your enemy, and others beside them whom you know not. Allah knows them." [TMQ 8:60]

This striking of fear cannot take place without preparation, and preparation requires the presence of factories. Thus the verse indicates the obligation of establishing the military factories through the meaning of necessity (*dalalat ul-iltizam*), or based on the rule that states (whatever is necessary for an obligation is itself obligatory). This is besides the evidences that oblige Jihad, which indicate by necessity the obligation of establishing factories.

Factories that Allah obliged their establishment by the State are not confined to military industries. There are as well other factories that the state must establish, which came in the book of 'The Funds in the Khilafah State', as follows:

"**The factories**: The state must establish two types of factories based on the obligation upon the State to look after the interests

of the citizens:

The first type: The factories that are related to the assets of the public property such as the factories used in extracting, purification and melting the minerals, and the factories for extracting and refining oil. These types of factories are from the public property in relation to the product they produce. Since the assets of the public property are public property to all Muslims, then their factories are publicly owned by all Muslims, and the State establishes them on behalf of the Muslims.

The second type: The factories that are related to the heavy industry and the weapons industry. These types of factories are allowed to be owned by individuals because it is of the individual property. However, since such type of factories and industries need huge funds which are difficult to be availed by individuals, and since the heavy industry nowadays are not individual weapons owned by individuals, as it was the case at the time of the Messenger (saw) and the *Khulafa'a rashidoon*. They infact become owned by the State, and the State works on providing them, because the duty of caring obliges it to do so. This is particularly after the huge development of the weapons, and their tools become heavy and costly. Therefore, it is obligatory that the State establishes factories for manufacturing weapons, and factories for the heavy industries. This would not mean preventing the individuals from establishing these industries."

It is an obligation upon the Khilafah to establish these factories, i.e. they are the duty of the Khaleefah. He appoints for them a general manager linked directly to him, or to his deputy, choosing either ways he wants.

4. International relations

It has been mentioned earlier that one of the responsibilities of the executive assistant is to be intermediary between the Khaleefah

and the states with respect to the international relations.

During the time of the Messenger (saw) and the *Khulafa'a rashidoon* the Messenger and then the *Khulafa'a rashidoon*, would address these relations directly through their secretary, i.e. the executive assistant. The messenger (saw) is the one who carried the correspondence regarding the Hudaybiyah treaty and concluding the peace agreement. It was also reported from Umar (ra) that when the delegate from Kissra came to him he found him sleeping at one of the gates of al-Madina al-Munawwarah.

However, the Khaleefah is allowed to address the international relations directly through his executive assistant as well as by appointing a manager in charge of the international relations, the same as any other organisation in the State.

Therefore, these four departments can be gathered in one department, called the department of the ameer of Jihad, because their subject is linked together.

They might also be separate from each other as the Messenger (saw) did, as mentioned before.

Because of the big domain of work in these four departments, particularly as witnessed nowadays where there are numerous fields of armies, internal problems, the arts of intrigues devised by the states, agents, and the classes of the mercenary politicians, the various crimes; these besides the complications in the international relations. In addition, there are various fields of industry and advanced technical means in use nowadays, etc. Further In order that the mandatory powers of ameer of Jihad do not expand much therefore becoming the centre of the State power which might cause harm to the State if his taqwa declined. Due to all these points we adopt keeping these departments separate from each other, and linked to the Khaleefah as departments independent from the State organisations, as follows:

- Ameer of Jihad - war department (army)
- Department of internal security
- Department of industry
- Foreign department.

5. Ameer Of Jihad – War Department (Army)

The Department of War: It is one of the State's organisations, and its head is called the *ameer* of Jihad, and not the manager of Jihad. This is because the Messenger (saw) used to give to the leaders of the army the names of ameers. Ibn Sa'ad narrated that the Messenger of Allah (saw) said:

« أمير الناس زيد بن حارثة، فإن قتل فجعفر بن أبي طالب، فإن قتل فعبد الله بن رواحة، فإن قتل فليرتض المسلمون بينهم رجلاً فيجعلوه عليهم »

"The ameer of the people is Zayd ibn Harithah; if he is killed then the ameer is Ja'far ibn Abi Talib; and if he is killed the ameer is Abdullah ibn Ruwahah; and if he is killed let the Muslims choose one man from among them and make him their ameer." [1]

Al-Bukhari narrated from Abdullah ibn Umar (ra) said: "The Messenger of Allah (saw) appointed in the expedition of Mu'tah Zayd ibn harithah as ameer…" Al-Bukhari narrated from the hadith of Salamah ibn Al-Akwa': "I went in fight with Zayd, he was appointed ameer over us". Al-Bukhari and Muslim narrated from Abdullah ibn Umar (ra) that he said:

« بعث النبي صلى الله عليه وسلم بعثاً، وأمر عليهم أسامة بن زيد، فطعن بعض الناس في إمارته، فقال النبي صلى الله عليه وسلم: إن تطعنوا في

[1] Al-Muntazam 1/382, Gazawat Arrasul 1/63

إمارته فقد كنتم تطعنون في إمارة أبيه من قبل، وأيم الله إن كان لخليقاً للإمارة... »

"The Prophet (saw) sent an army and appointed Usamah ibn Zayd as an ameer over them. So some people defamed his leadership, so the prophet (saw) said: If you defame his leadership you defamed the leadership of his father before. By Allah! He is worthy of leadership…"

The *sahabah* would call the army of Mu'tah the army of ameers. Muslim narrated from Ibn Baridah, he said: "The Messenger of Allah (saw) would advise the ameer when he would appoint him over an army or an expedition …"

The war department takes charge of all the issues connected to the armed forces, in terms of the army, equipment, weapons, facilities and ammunition and the like. This is in addition to military academies, military operations and whatever is necessary of Islamic culture, general culture for the army and every thing related to war and preparation for it. Also included in the responsibilities of the department of war is sending spies against the belligerent unbelievers. There would be a special division for this purpose that follows the war department. The evidences to this are well manifested in the *Seerahh* of the Messenger (saw).

All of this is undertaken and supervised by the department of war. And as the name indicates it is related to war and fight. War needs an army, and the army needs formation and preparation in terms of its leadership, chiefs of staff, officers and soldiers.

The formation of the army needs preparation, and physical as well as technical training. Such training addresses the art of fighting using the various weapons, and advances in synchrony with the development of weapons. Therefore, the technical and military

study is one of the requirements of the army, and training on using the arts of fighting and the various types of weapons are from the necessities for the army.

Allah (swt) has honored the Muslims by making them the propagators of the message of Islam to the entire world. He also defined to them the method of conveying Islam by da'wa and Jihad. He made Jihad obligatory upon them and military training a duty.

So, every Muslim male who reaches the age of fifteen years is obliged to have military training in readiness for Jihad. As regarding military conscription, it is a duty of sufficiency (collective duty).

The evidence about military service are His (swt) saying:

﴿ وَقَاتِلُوهُمْ حَتَّى لَا تَكُونَ فِتْنَةٌ وَيَكُونَ الدِّينُ كُلُّهُ لِلَّهِ ﴾

"And fight them on until there is no persecution and deen (submission) becomes to Allah in its entirety." [TMQ 8:39]

It is also the *Hadith* of the Prophet of Allah (saw):

« جاهدوا المشركين بأموالكم وأنفسكم وألسنتكم »

"Do perform Jihad against the Mushriks with your wealth, hands and tongues." narrated by Abu Dawud on the authority of Anas.

In order for the fight to be carried out according to the way determined by *Shari'ah*, with the aim of beating the enemy and conquering the land, it necessitates military training, which is compulsory like Jihad, in accordance with the *Shari'ah* principle

that States: "That which is necessary to accomplish a duty is itself a duty". The soliciting of fighting falls within the order to fight. When Allah (swt) says: "*And fight them.*" This is an order to fight and an order to perform any task that makes the fighting possible. Besides that, Allah (swt) says*:*

﴿وَأَعِدُّوا لَهُمْ مَا اسْتَطَعْتُمْ مِنْ قُوَّة﴾

"Make ready for them all that (of armed force) you can ". [TMQ 8:60]

Training and high military expertise form part of the preparation of fighting power, for they have to be available in order to make fighting possible. Thus training forms part of the force that must be obtained such as military hardware and military operations etc.

As for the Military conscription, it is the assignment of people to permanently be part of the armed forces, i.e. to have Mujahideen performing effective Jihad and whatever the duty of Jihad entails, this is compulsory, for performing Jihad is a continuous duty whether the enemy attacks us or not, which is why military conscription is a collective duty that is included in the hukm of Jihad.

As regarding stipulating the age of fifteen years, this is due to the hadith reported by Al-Bukhari through Nafi', he said:

« حدثني ابن عمر أن رسول الله صلى الله عليه وسلم عرضه يوم أحد وهو ابن أربع عشرة سنة فلم يُجزني، ثم عرضني يوم الخندق وأنا ابن خمس عشرة سنة فأجازني »

"Ibn Umar (ra) told me that the Messenger of Allah (saw) turned to him on the day of Uhud when he was fourteen

years old, but did not allow him. Then he turned to me on the day of the trench when I was fifteen years old and he allowed me to fight."

Nafi' said: (I visited Umar ibn Abdul-Aziz when he was a Khaleefah. I told him of this hadith. He said: This is indeed a limit between the young and the mature. So, he wrote to his governors to make duty for whoever reached fifteen years). It means to assign rizq (funds) for them in the deewan of the army.

This is what we adopt; meaning whoever reaches the age of fifteen has to be given military training.

Divisions of the army:

The army is divided into two parts: The reserves - which consist of all the Muslims who are able to perform the military tasks; and the regulars - who are permanent conscripts in the armed forces and receive salaries from the State's funds just like any other employee.

This is derived from the obligation of Jihad, for verily every Muslim is commanded to perform the duty of Jihad, and hence is obliged to train for it. As for the need to have a regular army, this is based on the *Shari'ah* principle which States: "That which is necessary to accomplish a duty is itself a duty." Because the duty of Jihad cannot be constantly carried out, and Islam and Muslims cannot be protected from the kuffar, except with the presence of a permanent army, the Imam is therefore obliged to have a regular army at his disposal.

As for the allocation of salaries for the armed forces, this is for Muslims just like other employees, which is obvious. A non-Muslim is not required to perform Jihad, but if he did it would be acceptable from him, and it would be permitted to pay him for it and to allocate funds for him. This is due to what At-Tirmidhi narrated from Al-Zuhri:

« أنّ النبيَّ صلى الله عليه وسلم أسهم لقوم من اليهود قاتلوا معه »

"That the Messenger of Allah (saw) sought the services of some of the Jews and he allocated a share to them." Also Ibn Hisham narrated:

« أنّ صفوان ابن أمية خرج مع النبي صلى الله عليه وسلم إلى حنين، وهو على شركه، فأعطاه مع المؤلفة قلوبهم من غنائم حنين »

"That Safwan ibn Umayya went on an expedition with the Messenger of Allah (saw) to Hunain whilst still a mushrik, and the Prophet (saw) allocated some money for him from the spoils of hunain from *Mu'allafati Qulubuhum's* (new muslims) share."

Thereupon, it is allowed for the unbeliever to fight with the Islamic army, and be given funds because of his presence with them. Moreover, the definition of *'Ijara'* or hiring as being a contract concluded over benefit in return for compensation means that hiring is allowed for every benefit which the employer can receive from the hired person. So hiring a person for the army and fighting is included in such a contract because it is a benefit. Thus, the general evidence of hiring over any benefit is valid evidence to allowing the hiring of the kafir for the Army, for military service and fighting.

This is with regards to non-muslims. As for the Muslims, even though Jihad is an act of worship, it is allowed to hire Muslims for military service and fighting because of the general evidence of hiring. Hiring is allowed for carrying out the *Ibadah* if its benefit extends to more than the one who carries it out. This is due to the saying of the Prophet (saw):

« إن أحق ما أخذتم عليه أجراً كتاب الله »

"The most worthy thing to take a wage on is teaching the Book of Allah", as narrated by Bukhari on the authority of Ibn Abbas'.

Teaching the book of Allah is worship; and since it is allowed to hire a muslim to teach the Qur'an, lead the prayer, or give *Azan*, which are all acts of worship, it is also allowed to hire a muslim to do Jihad and do military service as all of these are acts of worship whose benefit extends beyond the one who performs them. Moreover, there is evidence about hiring Muslims for Jihad even though it is a duty upon them as it came explicit in the hadith. Abu Dawud narrated from Abdullah ibn Amru, he said that the Prophet (saw) said:

« للغازي أجره، وللجاعل أجره وأجر الغازي »

***"Al Ghazi* has his own wage and al *Ja'il* has his own wage and the wage of the *Al Ghazi*."**

Al Ghazi is a person who fights for himself. *Al Ja'il* is the one who has someone else to fight on his behalf in return for a wage he pays to him. It is indicated in the dictionary of Al-Muhit, **"that *Al ja'ala* is the amount given to someone doing an action; and what is assigned to a *Mujahid* (*Ghazi*) if he made Jihad on your behalf is also ju'l."** Thus, the hadith indicates that it is allowed for the person to pay a wage for somebody else to fight on his behalf, i.e. it is allowed for a person to be hired for fighting.

Al Bayhaqi narrated on the authority of Jubayr ibn Nufayr who said: The Messenger (saw) said:

« مثل الذين يغزون مِن أُمتي، ويأخذون الجُعل، يتقوون على عدوهم، مثل أُم موسى، ترضع ولدها، وتأخذ أجرها »

"Those of my *Ummah* who fight and take wages, and strengthen themselves against their enemy are like the mother of Moses who breastfed her son and got her reward (ajr)."

Ajr here means the wage. Thus, soldiers are given salaries like other civil servants.

Muslim soldiers would have their reward with Allah in their Jihad even if they received salaries. This is due to the mentioned hadith of Al-Bukhari, which allows taking wage for teaching the book of Allah, which is worship. This means such teacher has reward with Allah (swt) in accordance with his intention.

The Islamic army is one army, consisting of many contingents which can be given numbers such as the first, second etc, or they can be named after the provinces or the districts, for example the army of ash-Sham, the army of Egypt or the army of Sana'a.

The Islamic army is stationed in special camps, and in every camp there is placed a group of soldiers in one complete unit or part of a unit, or many units. These camps have to be put in all provinces and some of them have to be put in military bases. Some of them would be mobile camps which would be in constant movement and would be massive forces. A name is given to each of these camps like the camp of Habbaniyah and for each camp there is a special banner.

These arrangements may be of the *Mubah* such as naming the armies after the names of the *Wilayaat* or giving them special numbers, so it is left to the opinion of the Khaleefah and his

ijtihad. Or they are issues related to the subject of " that which an obligation cannot be performed without it" such as the necessity to protect the country and to strengthen the army, like placing the armies at the frontiers, and putting some of these camps in all the *Wilayaat* and in strategic places to protect the country.

'Umar ibn al-Khattab distributed the camps of the army over all the *Wilayaat* so he made Palestine as one unit and Al-Mosul as one unit. He kept one army unit at the centre of the State and he would keep one army unit ready to fight at a moment's notice.

The Khaleefah is the leader of the army

The Khaleefah is the leader of the army and he is the one who appoints the Chief of Staff and an *Ameer* to every brigade, and a commander to every division. With regards to the other posts in the army they are appointed by the commanders of the brigades. With regards to appointing a person to the staff, it has to be according to his military culture and he is appointed by the Chief of Staff.

This is because the Khaleefah is the general leadership of all the Muslims in the world, for establishing the *Shari'ah* rules and conveying the message to the world. The way of conveying the message to the world is Jihad. Therefore, the Khaleefah should take charge of Jihad because the Khilafah contract has been convened upon him alone, so it is not allowed for any other person to carry it out other than him. Thus the Khaleefah takes responsibility of Jihad himself. It is not allowed for anyone other than him to undertake it, although every muslim carries out Jihad. Hence carrying out Jihad is one matter and undertaking the responsibility for it is another. Jihad is a duty upon every Muslim, but holding the responsibility for the Jihad is only for the Khaleefah.

Regarding the fact that the Khaleefah may appoint another person

on his behalf to carry out his duty, this is allowed under his own observation and supervision and it is not allowed to be in an independent way without his observation and supervision. This type of delegation is not the same as the work of an assistant to the Khaleefah. Reporting to the Khaleefah in this context means that the one who carries out Jihad on his behalf should be under his supervision. Leadership of the army with this restriction i.e. under the Khaleefah's observation and supervision, is allowed to be given to whomever he wishes. But to take charge of the army without his observation and supervision leaving the Khaleefah only as a figurehead, is not allowed. This is because the Khilafah contract has been convened upon him, so he has to take the responsibility for the matters of Jihad. Therefore, what is usually said in the non-Islamic systems that the head of State is the supreme leader of the army, meaning he is a formal leader only, while another leader runs the army independently, is considered invalid in the view of Islam. It is a matter which is not approved by the *Shari'ah;* rather, the *shar'* obliges the Khaleefah to be the actual leader of the army.
However for other types of leadership issues like the administrative and technical matters, the Khaleefah is allowed to appoint someone on his behalf to carry them out independently, and it is necessary that they be under his actual observation as is the leadership.

The Messenger (saw) undertook the leadership of the army, the leadership for the battles and he also appointed leaders for the divisions of the army which went out for fighting without him, namely the expeditions. For every expedition appointed a commander and in some cases he took precaution and named the one who should succeed the commander in case he was killed as happened in the expedition of Mu'ta. Al Bukhari narrated on the authority of Abdullah ibn Umar who said:

« أَمَّر رسول الله صلى الله عليه وسلم في غزوة مؤتة زيد بن حارثة. فقال رسول الله صلى الله عليه وسلم: إن قُتِل زيد فجعفر، فإن قتل جعفر فعبد الله بن رواحة »

"The Messenger of Allah (saw) appointed Zayd Ibn Haritha as an *Ameer* in the battle of Mu'ta. The Messenger of Allah (saw) said: 'if Zayd is killed, then it will be Jaffar (as the *Ameer*) and if Jaffar is killed then it will be Abdullah ibn Rawahah (as the *Ameer*).'"

So the Khaleefah is the one who appoints the leaders of the armies, its commanders, ties for them the flags and appoints the leaders of the divisions. So the army which was sent to Syria like the Army of Mu'ta and the army of Usama, was one brigade because the evidence for this is that the Prophet (saw) had tied the flag to Usama. Also the expeditions which fought in the Arabian Peninsula and returned back to Madinah such as the expedition of Sa'ad ibn Waqqas which he sent towards Makkah were in the form of divisions. This indicates that the *Ameers* of the brigades and the commanders of the divisions are appointed by the Khaleefah. However, other than the ameers of the army and brigades of the divisions, it is not proved that the Messenger (saw) appointed them. This means he left their appointment in the expedition to their leaders. As regarding the Chief of Staff who is responsible for the technical matters, he is like the army leader in terms of being appointed by the Khaleefah and he can be made independent and he carries out his duties without being directly supervised by the Khaleefah, although he is under his command.

6. Internal Security

The Department of internal security is responsible for everything pertaining to internal security and is headed by the manager of internal security. This department would have a branch in each wilayah called the internal security section, and headed by *sahib ush-shurtah* (head of the Police Dept) in the wilayah, who will be under the responsibility of the wali in terms of execution. However, he would follow the department of internal security regarding administration; a matter that will be organised by a special law.

Internal security department is the department responsible for administrating every thing linked to security. It takes charge of maintaining security in the country by using the police force (*shurtah*). Thus it is the primary means in maintaining security; so it is allowed to use the police any time it wants, and the way it likes, and its orders are implemented immediately. However, if the police require the help of the armed forces it can in fact submit a request to the Khaleefah. He can order the army to help the internal security department or to provide it with military force to help it in maintaining the security, or he can issue any order he deems fit. He is also entitled to refuse such requests and demand that the police carry out the task themselves.

The police force consists of the mature male who carry the citizenship of the state. Women are allowed to join the police so as to execute womens requirements that are related to the responsibilities of the internal security department. A special law will be issued in that regards according to the divine rules.

Police force is divided into two parts: The police of the army, and the police that operates under the command of the ruler, which has to have a special uniform and special signs specific for maintaining security.

Al-Azhari said: (*shurtah* of any thing is its best. This includes *shurat*

(police) because they are the best soldiers. It is also said that *shurtah* is the foremost group that comes ahead of the army. It is as well mentioned they are called *shurat* because they have signs that characterise them, in term of uniform and status); this is chosen by Al-Asma'i. It was also mentioned in Al-Qamoos (*Shurtah*, where individual is called *shurat*, means the first battalion which attends the war and is ready for death, it is also the helpers of the *wali*s; and were called so because they announced themselves through signs that characterise them).

As regarding the police of the army (military police), which is one of the divisions of the army that has its signs and comes in front of the army to control its matter, this is part of the army and follows the *ameer* of Jihad, i.e. it follows the department of war. As regarding the *shurtah* who are placed under the service of the rulers, they follow the department of internal security. Al-Bukhari narrated from Anas:

« أن قيس بن سعد كان يكون بين يَدَي النبي صلى الله عليه وسلم بمنزلة

صاحب الشُرَطِ مِن الأمير »

"That Qays ibn Sa'ad used to be in front of the prophet (saw) in the position of the policeman for the ameer".

What is meant here is Qays ibn Sa'ad ibn Ubadah al-Ansari al-Khazraji. Al-Tirmidi narrated it:

« كان قيس بن سعد من النبي صلى الله عليه وسلم بمنزلة صاحب

الشرطة من الأمير. قال الأنصاري: يعني مما يلي من أموره »

"Qays ibn Sa'ad used to be in front of the prophet (saw) in the position of a policeman for the ameer. Al-Ansari said: It

means one of the people who discharge his issues".

The Khaleefah is allowed to make all the police that is responsible for internal security a part of the army, i.e. under the supervision of department of war. He is as well allowed to make an independent department, i.e. the internal security department.

However, we adopt the independence of this force, i.e. the *shurtah* who are put under the service of the rulers to protect security, and they are under the supervision of the internal security department as an independent organisation which follows the Khaleefah directly like other State organisations. This is due to the mentioned hadith narrated from Qays ibn Sa'ad, and as we explained earlier about the independence of the four departments related to Jihad; where each one of them would be under direct supervision of the Khaleefah, rather than be left as one organisation.

Thus the *shurtah* (police) will be under the supervision of the internal security department.

The responsibilities of the internal security department:

The task of the Internal security Department is maintaining the security of the State. The actions that could lead to a breach of internal security are many that include:

Apostasy from Islam, rebellion against the State manifested in destructive activities and actions of sabotage e.g. strike or the occupation of vital centers of the State, as well as aggression against private, public, or State property. It might also be through rebellion against the State by using arms to fight against it.

Other actions which undermine internal security include the attack on the property of people by theft, looting, robbery, misappropriation, as well as attacks on people through assault,

injuring, and killing in addition to attacks on their honour by lying, slandering and raping.

One of the other responsibilities of the internal security department is to deal with the suspects and protect the *ummah* and the State from their danger and harm.

These are the most important actions that could threaten the internal security. The department of internal security protects the State and the people from all these actions. Therefore whoever is declared an apostate, and sentenced to death when he does not repent, this department executes the death sentence against him. If those who declare apostasy are a group, then they have to communicate with them and ask them to return to Islam, and the State should not punish them in case they repented, returned to Islam and abided by the *shar'* rules. If however, they insist on apostasy then they are fought against. If they are small in number and the police force alone is able to fight them then it has to do so; but if they are large in number and the police force is unable to overpower them then they can request the Khaleefah to provide them with military force to help them. If this military force is not sufficient, then they can ask the Khaleefah to order the army to provide them necessary assistance.

This is concerning apostates. With regards to people who rebel against the State, if they do not use arms and limit themselves to destruction and sabotage by strikes, demonstrations, occupation of vital centers of the State, or aggression against private, public and State properties by demolition, then the internal security department restricts itself to using the police force in order to prevent such destructive actions. If it is not able to prevent the aggression it requests the Khaleefah to provide it with military force in order to stop the destruction and sabotage.

However if the people who rebel against the State use weapons and were able to establish themselves in an area and became a

force that the department of internal security is unable to subdue them and eliminate their rebellion through the use of the police force alone, then it requests the Khaleefah to provide it with military force or army assistance, depending on the need, to face the rebels. Before it fights them, the department should communicate with them to see what complaints they may have. It should ask them to return to obedience and the *Jama'ah* and to surrender their arms. If they responded favourably and returned back, then the State should hold back from fighting them. If they reject and insist on rebelling, then it would fight against them in order to discipline them and not to annihilate and destroy them. It fights against them so that they turn back to obedience and give up rebellion and surrender their arms. An example of this is the way Imam 'Ali ibn Abi Talib fought against the *Khawarij*. He called them to surrender first and if they left the rebellion he would not fight against them but if they insisted on rebelling he fought against them, to discipline them so that they return to obedience, stop the rebellion and surrender their arms.

With regards to those who use violence, such as the highway robbers, who attack people, forcibly obstruct the highways, steal property, and kill, the department of internal security will dispatch a police force to arrest them and punish them, which is killing and crucifying, killing, or amputating their opposite limbs, or deporting them to another place, according to the ayah:

﴿إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ وَيَسْعَوْنَ فِي الأَرْضِ فَسَادًا أَنْ يُقَتَّلُوا أَوْ يُصَلَّبُوا أَوْ تُقَطَّعَ أَيْدِيهِمْ وَأَرْجُلُهُمْ مِنْ خِلاَفٍ أَوْ يُنفَوْا مِنْ الأَرْضِ﴾

"The punishment of those who fight against Allah's Messenger and who walk in the land with corruption is that they should be killed or crucified, or their opposite hands and legs should be amputated, or they should be deported in the land" [TMQ 5:33]

The fighting against these people is not like fighting against rebels who fight against the State. Fighting against the rebels is to discipline them, while fighting against the highway robbers is to kill and crucify them, so they are fought in all cases even if they fight or don't. They are treated as outlined in the *Ayah*. Whoever killed and took property, he is killed and crucified; and whoever killed and did not take property, he is killed but not crucified; and whoever took property without killing, his hand and leg will be amputated from opposite sides without killing; and whoever raised arms and scared the people and did not kill or take property he is exiled from his area to another place or country.

The department of internal security restricts itself to using the police force in maintaining security. It does not use other than the police force except when the police force is unable to maintain internal security. In that case it requests the Khaleefah to provide it with military force or army assistance, according to what is required.

With regards to aggression against property by stealing, misappropriation, robbing or looting; or aggression against lives by use of force, wounding or killing; or aggression against honour by lying, slandering, or raping, the department of internal security prevents these things by its vigilance, guards and patrols, and also by implementing the verdicts of the judges against those who perform aggression against the property, lives and honour. All this requires the use of the police force alone.

The *shurtah* is entrusted with keeping the public order, supervision over the internal security and carrying out the executing aspects. This is due to the mentioned hadith by Anas that the Messenger (saw) used to keep Qays ibn Sa'ad as the *sahib ash-shurtah* (head of police). This indicates that *shurtah* are stationed before the rulers, which means they undertake with whatever the rulers want of the execution force for implementing the *shar'*, maintaining order and

protecting security. This is besides conducting patrols, which is walking around at night for chasing the thieves and arresting the wrongdoers and the wicked. Abdullah ibn Mas'ood was *ameer* over the night patrols at the time of Abu Bakr. Umar ibn Al-Khattab would take charge of night patrols himself, taking his servant in his company and sometimes Abdur Rahman ibn Awf. Therefore, it is wrong that which some Islamic countries do in terms of making the owners of the shops appoint guards at night to guard their shops, or appointing guards by the state at the cost of the owners of the shops. This is because this work is part of the night patrolling which is the responsibility of the state, and from the functions of the *shurtah*. So, people are not charged with it and nor charged with its costs.

As regarding dealing with the suspects, the people who pose harm and danger to the state entity or the community or even individuals; these types of suspects have to be pursued by the state. Whoever has knowledge of any of such people are obliged to report about them. The evidence to this is what Al-Bukhari and Muslim narrated from Zayd ibn Arqam, he said:

«كنت في غزاة، فسمعت عبد الله بن أبيّ يقول: لا تنفقوا على من عند رسول الله صلى الله عليه وسلم حتى يَنْفَضُّوا من حوله، ولئن رجعنا إلى المدينة ليخرجن الأعز منها الأذل، فذكرت ذلك لعمي أو لعمر، فذكره للنبي فدعاني فحدثته... الحديث»

"I was in an expedition, and I heard Abdullah ibn Ubayy say: Do not spend upon those with the Messenger of Allah so that they disperse away from him; and if we return to madina the ones with more power would remove the ones with less power. I mentioned this to my uncle or to Umar, who mentioned it to the prophet (saw). He called upon me and I

told him….hadith"

In the narration by Muslim, I came to the prophet (saw) and informed him of that. Ibn Ubayy used to perform frequent visits to the belligerent unbelievers and his relations with them were well known, such as with the Jews around Al-Madinah and the enemies of Islam. We need to deal with this subject in detail so as not to mix it with espionage on the citizens, which is prohibited due to His (swt) saying:

﴿وَلاَ تَجَسَّسُوا﴾

"And do not spy". [TMQ 49:12]

Therefore spying is only limited to the suspects.

The suspects are those who visit the unbelievers frequently who are actual or potential warriors. This is because spying is allowed on the belligerent unbelievers as part of the war strategy, and for preventing harm from falling upon Muslims; besides the *shar'i* evidences in this subject, which include all the belligerent people. This is because if they were actual belligerents then obligation of spying on them is quite clear. If they were potential belligerents then spying on them is allowed for war with them is expected at any time.

Thus any citizen who frequently visits the warring unbelievers will be under suspicion due to his contact with those allowed to spy on, i.e. the belligerent unbelievers.

The details of this issue will be as follows:

1. Spying on the actual belligerent unbelievers is obliged upon the state; a matter which besides the above mentioned evidences is emphasized by the rule: **"that which is necessary to perform an obligation is itself obligation."** This is because the knowledge of

the force of the enemy, its plans, its objectives and its strategic locations and the like are necessary for defeating the enemy. This is undertaken by the department of war; and it includes the citizens who initiate contact with the actual belligerent unbelievers; since in origin there are no normal contacts between the citizens and the actual belligerents, where the relation with them is a relation of war.

2. Spying on the potential belligerent unbeliever is allowed; and it is obligatory upon the state in case of harm, such as when it is feared that they would help the actual belligerents or join them. The potential belligerent unbelievers are of two types:

The first: The potential belligerent unbelievers in their country; the department of war would spy on them.

The second: The potential belligerent unbelievers who enter our state, such as the ambassadors, the covenants and their like. They have to be put under observation and spying by the internal security department.

The department of internal security takes charge of surveillance and spying on the citizens who frequently visit the officials amongst the potential belligerent unbelievers or their representatives in our country. The department of war also takes charge of the citizens who frequently visit the officials amongst the actual belligerent unbelievers or their representatives in their own country. This however requires two conditions:

The first: It should become clear by surveillance carried out by the department of war and the internal security department on the officials amongst the potential belligerent unbelievers or their representatives that the frequent visits to these unbelievers or their representatives, whether inside or outside the state are unnatural and attention seeking.

The second: Whatever is discovered by the two departments has to be presented to the judge of hisbah; and then the judge of hisbah will analyse whether in this there is imminent harm for Islam and the Muslims.

If this was the case then it is allowed to the department of internal security to spy on these types of the citizens who make such frequent visits to the officials amongst the potential belligerent unbelievers or their representatives in our state. It is as well allowed for the department of war to spy on the citizens who make frequent visits to the officials amongst the potential belligerent unbelievers and their representatives in their own country. These are the evidences related to all of this:

1. Spying on Muslims is haram as stipulated in this verse. Allah (swt) says:

﴿وَلاَ تَجَسَّسُوا﴾

"And do not spy on each other..."

This is general forbiddance of spying; and it has to continue as general unless there is evidence that specifies it. This is confirmed by the hadith reported by Ahmad and Abu Dawud in his narration from Al-Miqdad and Abu Umamah, they said:

« إن رسول الله صلى الله عليه وسلم قال: إن الأمير إذا ابتغي الريبة من الناس أفسدهم »

"The Messenger of Allah (saw) said: If the ameer sought for suspicion amongst the people he would undermine them."

Therefore spying on a Muslim is haram. This rule applies as well

on the people of the dhimmah from the citizens of the state. Thus spying is haram upon the citizens, Muslims and non Muslims.

Spying on actual belligerent unbelievers, such as those who are in war with us; and on the potential belligerent unbelievers, such as those who enter our country with covenant or under our protection like ambassadors and others, or the actual belligerent unbelievers in their own country; spying on all such people is allowed, rather obligatory on the actual belligerent, and on the potential belligerent in case of harm.

The evidences are clear in the Seerahh of the Messenger of Allah (saw), which include:

It was reported in the Seerahh of Ibn Hisham about the expedition of Abdullah ibn Jahsh, where he ordered him to travel for two days. After Abdullah ibn Jahsh travelled for two days he opened the letter of the Messenger of Allah (saw) and read it. He found in it:

"If you read this letter of mine travel till you reach Nakhlah that comes between Makkah and Ta'if, where you camp and monitor Quraysh from there and collect to us their news".

It was reported in the Seerahh of Ibn Hisham regarding the events of the ghazwah of Badr that Ibn Ishaq said:

«ركب رسول الله صلى الله عليه وسلم هو وأبو بكرحتى وقف على شيخ من العرب، فسأله عن قريش وعن محمد وأصحابه وما بلغة عنهم، فقال الشيخ لا أخبركما حتى تخبراني ممَّن أنتما؟ فقال رسول الله إذا أخبرتنا أخبرناك. قال أذاك بذاك؟ قال: نعم. قال الشيخ: ... وبلغني أن قريشاً خرجوا يوم كذا وكذا، فإن كان الذي أخبرني صدقني، فهم اليوم بمكان كذا

وكذا للمكان الذي فيه قريش، فلما فرغ من خبره قال: ممَّن أنتما؟ فقال رسول الله صلى الله عليه وسلم نحن من ماء، ثم انصرف عنه، قال يقول الشيخ: من ماء، أم من ماء العراق؟

ثم رجع رسول الله صلى الله عليه وسلم إلى أصحابه، فلما أمسى بعث على بن أبي طالب والزبير بن العوام وسعد بن أبي وقاص في نفر من أصحابه، رضوان الله عليهم، إلى ماء بدر يلتمسون الخبر عليه، أي عيوناً على قريش»

"The Messenger of Allah (saw) and Abu Bakr rode till they met a sheikh from The Arabs. He asked him about Quraysh and about Mohammad and his Companions and any information he got about them. The sheikh said I will not inform you till you tell me from where are you? The Messenger of Allah (saw) Said, if you tell us we would tell you. He said, is it this for that? He said: yes. The Sheikh said: ..he informed me that the Quraysh left on such and such day. If the one who informed me said the truth, then they will be in such and such place, naming the place where the Quraysh were. When he finished his news he said: From where are you? The Messenger of Allah (saw) said: water, and he then turned away from them. He said, the sheikh was saying: From water, or from the water of Iraq? Then the Messenger of Allah (saw) returned back to his companions. When night fell down, he sent Ali ibn Abi Talib, Zubair ibn Al-Awwam and Sa'ad ibn Abi Waqqas together with some of his companions (ra) to the water of Badr to seek the news from there, i.e. to spy upon Quraysh."

Ibn Ishaq also reported: Ibn Hisham mentioned under the title: Basbas ibn Amru and Adiyy ibn Abu Al-Zaghbaa' spy for news, till

he said: Adiyy and Basbas heard (i.e. . what the two maids said at the water regarding the news of Quraysh). So, they jumped on their two riding camels and went to the Messenger of Allah (saw) where they informed him of what they heard.

Though these evidences were regarding Quraysh, which was an actual belligerent, however the rule applies to the potential belligerent since war is expected with them. The only difference is that spying is obligatory in case of the actual belligerent because the war strategy for defeating the enemy requires that. It is however allowed regarding the potential belligerent because the war is expected with them. If there is possible harm from them however, i.e. it is expected that they might help the belligerent or join them actually, then spying on them becomes obligatory as well.

Thus, spying on the belligerent unbelievers is allowed for Muslims, and obligatory upon the state to provide. This is due to the order of the Messenger of Allah (saw) of doing it as mentioned above. It also comes under the rule: "That which is necessary for performing an obligation is itself obligatory".

If some citizens, whether Muslims or non Muslims, frequently visited the belligerent unbelievers, while they were actually or potentially belligerent, in our state or in theirs, then these are suspects, and it is allowed to spy on them and follow their moves. This is because they frequently visit those who are allowed to be spied upon, and because harm is also expected from them on the state if they spied for the advantage of the unbelievers.

However, to allow spying on such citizens the above mentioned two conditions must be verified.

The department of war takes charge of spying on the citizens who frequently visit the actual belligerent, as well as on the citizens who frequently visit the officials amongst the potential belligerent and

their representatives in their own country. The department of internal security takes charge of spying on the citizens who frequently visit the officials amongst the potential belligerent unbelievers and their representatives in our state.

7. The Foreign Affairs Department

The foreign affairs department undertakes the responsibility for all foreign affairs, pertaining to the relation of the Khilafah State with the foreign States, whatever these affairs and relations may be. Whether they are related to the political aspect and what it entails in the forming of pacts, peace treaties, cease-fires, negotiations, appointment of ambassadors, sending messengers and delegates, and establishing embassies and consulates. It also includes relations, which are related to matters that are economical, agricultural, and to do with trade as well as postal communications or wired and wireless communications etc. All of these matters are run by the foreign affairs department, because they are concerned with the relations of the Khilafah State with other States.

The Messenger (saw) established foreign relations with other States and entities; He sent 'Uthman ibn 'Affan to negotiate with the Quraysh just as he negotiated with the delegates of Quraysh. He sent delegates to kings and he received the delegates of kings and *Ameer*s. He also concluded pacts and peace treaties. Similarly after him, his *Khulafa'a* established political relations with other States and entities. They appointed people to carry out these actions on their behalf, on the basis that whatever an action a person can perform himself, he can delegate it to another person to carry it out on his behalf.

Due to the complications of the international life, besides the expanse and variety of international political relations, we adopt that the Khaleefah delegates an organisation in the state specific to the international relations on his behalf, where the Khaleefah pursues its work as he does with any other ruling and administrative organisation in the state, whether directly or through the executive assistant, in accordance with the related divine rules.

8. Industry

The department of industry is the department that takes charge of all the affairs related to industry, whether they are pertaining to the heavy industry like manufacturing of motors, engines, vehicles, materials, electrical equipments, or light industry. Whether these factories are from the public property or individual property, which have a relationship with the military industries, all have to be based on the policy of war. This is because Jihad and fighting require an army. To fight the army needs weapons and so that these weapons are of the highest genre and readily available, it is necessary to have the industry within the State, particularly the military industry due to its strong relation with Jihad.

The State so that it remains independent from other countries and is not influenced by anyone of them, it should manufacture and develop its own weapons. This makes it independent and in continuous possession of the most advanced and strongest weaponry, regardless of the level of development and advancement of weapons. It would also have at its disposal, all that it needs of weapons to intimidate, both the visible and potential enemy as Allah (swt) says:

﴿وَأَعِدُّوا لَهُمْ مَا اسْتَطَعْتُمْ مِنْ قُوَّةٍ وَمِنْ رِبَاطِ الْخَيْلِ تُرْهِبُونَ بِهِ عَدُوَّ اللَّهِ وَعَدُوَّكُمْ وَآخَرِينَ مِنْ دُونِهِمْ لاَ تَعْلَمُونَهُمُ اللَّهُ يَعْلَمُهُم﴾

"Make ready for them all you can of (armed) force and of horses tethered, that thereby you may dismay the enemy of Allah and your enemy, and others beside them whom you know not. Allah knows them." [TMQ 8:60]

As such the State will have its own will, produce weapons that it needs and develop them continuously so that it owns the strongest and most developed weapons in order to terrify all the visible and potential enemies. Therefore it is a duty upon the State to

manufacture weapons by itself and it is not allowed to depend upon other States, because this allows other States to control it, its will, its weapons and its fighting.

It is quite clear in the world today that the States which sell weapons to other States do not normally sell every weapon, particularly the most developed weapons. They do not even sell weapons except with certain conditions that cover their utilisation. They will not sell them except in quantities that they, rather than the purchasing countries decide. This gives the State which sells arms, authority and influence over the State which buys the arms enabling it to enforce its own will upon the purchasing State, particularly if it was involved in a war. In that case it would need more arms, spare parts, and ammunition, which would increase its dependence on the State which exports its arms and increase its submission to its demands. This allows for the State which exports arms to control it and its will, especially at times of war and in times of great need for arms and spare parts. Hence such a State would make itself, its will and its entity hostage to the State that exports arms to it.

Therefore, for all these reasons, the State has to carry out by itself the manufacture of its own arms and everything it requires for its war machine and spare parts. This can't be achieved unless the State possessed heavy industry and started to build factories which produce heavy machinery, both military and non-military alike. Thus it is necessary that the State have factories for producing all types of atomic weapons, rockets, satellites, aeroplanes, tanks, spaceships, mortars, naval ships, armoured vehicles, and all types of heavy and light weapons. It is necessary that it has factories which produce machines, motors, materials, and electronics and factories which have a relation with public property and light factories which have a relation with the military or war industries. All this is required due to the responsibility of preparation which is obliged upon the Muslims by the saying of Allah (swt):

﴿وَأَعِدُّوا لَهُمْ مَا اسْتَطَعْتُمْ مِنْ قُوَّةٍ﴾

"Make ready for them all that you can of (armed) force." [TMQ 8:60]

Since the Islamic State conveys the message of Islam by *da'wa* and Jihad, it should be a State which should be continuously ready to carry out Jihad. This requires the existence of heavy and light industry built upon the basis of its war strategy. Thus in case if at any time it wanted to transform these factories for military purposes, it would effortlessly do that at. Therefore all the industries in the Khilafah State should be based on war strategy, and all the factories, which produce light and heavy machinery, should be based on this strategy, so that it becomes easy to convert their production to military production whenever the State requires.

9. Judiciary

The Judiciary is responsible for delivering the verdict for the purpose of enforcing it. It settles disputes between people, prevents whatever may harm the rights of the community and also settles the disputes between people and any person who is part of the ruling system, whether they are rulers or civil servants, the Khaleefah or any other person.

The origins of the judicial system and its validity are the Book and the *Sunnah*. As for the Book, Allah (swt) says:

﴿وَأَنْ احْكُمْ بَيْنَهُمْ بِمَا أَنزَلَ اللَّهُ﴾

"And judge between them by that which Allah has revealed." [TMQ 5:49].

And He (swt) also says:

﴿وَإِذَا دُعُوا إِلَى اللَّهِ وَرَسُولِهِ لِيَحْكُمَ بَيْنَهُمْ﴾

"And if they were invited to Allah and His Messenger to judge between them." [TMQ 24:48].

As for the *Sunnah*, the Messenger of Allah (saw) was himself in charge of the Judiciary and he judged between people.

The Messenger of Allah (saw) used to appoint the judges. He appointed 'Ali as judge over Yemen and he gave him instructions about how to judge by saying:

« إذا تقاضى إليك رجلان، فلا تقض للأول حتى تسمع كلام الآخر،

فسوف تدري كيف تقضي »

"If two men come to you do not give a judgement for one of them until you have heard what the other has to say, then you will be able to judge." As narrated by Al-Tirmidhi and Ahmad.

In another narration by Ahmad:

« إذا جلس إليك الخصمان فلا تكلَّم حتى تسمع من الآخر كما سمعت من الأول »

"If two disputing men sat before you do not speak until you hear from the other as you heard from the first."

He (saw) also appointed Mu'adh as a judge over al-Janad. Each of these is evidence to the validity of judiciary.

The definition of judiciary includes the judgement between people as mentioned above. It also includes the *Hisba* (public order) which means: **"Informing of the divine rule for the purpose of enforcing it regarding that which causes harm to the rights of the community."** This is highlighted in the *Hadith* of the heap of food: It has been reported in Sahih Muslim on the authority of Abu Hurairah:

«أن رسول اللهﷺ صلى الله عليه وسلم مَرّ على صُبْرَة طعام، فأدخل يده فيها فنالت أصابعُه بللاً، فقال: ما هذا يا صاحب الطعام؟ فقال: أصابته السماء يا رسول الله، فقال: أفلا جعلته فوق الطعام كي يراه الناس، من غَشَّ فليس مني»

"That the Messenger of Allah (saw) passed by a heap of

food. As he put his hand inside it his fingers became wet, so he said to the vendor: "What is this?" He said: "It was dampened by the rain O Messenger of Allah." He (saw) said: "Why don't you put it on the top so that people can see it? He who cheats is not one of us."

It also includes the *Madhalim* (unjust acts), because they are part of the judiciary and not part of the ruling, because they are complaints against the ruler. The *Madhalim* would be defined as: **"Delivering of the divine rule by way of compulsion in regarding the dispute there may be between the citizens and the** Khaleefah **or any of his *Walis* or employees, or any difference between the Muslims about the interpretation of any of the *Shari'ah* texts to be used in order to judge by them and to rule according to them."** The *Madhalim* (unjust acts) were mentioned in the *Hadith* of the Messenger of Allah (saw) regarding the fixing of prices where he said:

«... وإني لأرجو أن ألقى الله، ولا يطلبني أحد بمظْلِمة ظلمتها إياه في دم ولا مال »

"And verily I hope that I will meet Allah Azza wa jal without having anyone claiming against me a *Madhlama*, I inflicted on him be it of blood or funds." [Ahmad narrated on the authority of Anas.]

This indicates that complaints against the ruler, or the *Wali* or the civil servant should be submitted to the judge of *Madhalim*, and the Judge of *Madhalim* would deliver the divine rule by way of enforcement. Therefore the definition would include the three areas of judiciary reflected in the *Ahadith* and actions of the Messenger of Allah (saw); and these are: settling disputes between people, preventing whatever may harm the interests of the community and the settling of the disputes between the citizens

and the rulers or between the citizens and the civil servants within their duties.

The types of judges

There are three types of judges: One is the *Qadi*, and he is in charge of settling the disputes between people over transactions and penal codes. The second is the *Muhtasib*, who is in charge of settling any breach of law that may harm the interests of the community or property. And the third is the judge of *Madhalim*, who is in charge of settling disputes between the people and the State.

These are the three types of judges. As for the evidence about the judge who settles disputes between people, this is derived from the actions of the Messenger of Allah (saw), and from his appointment of Mu'adh Ibn Jabal over an area of Yemen. As for the evidence of the judiciary regarding the settling of disputes which endanger the interests of the community, where the judge is known as the *Muhtasib*, this is confirmed by the action and saying of the Messenger of Allah (saw), for he said**:**

« ليس مِنّا مَن غش »

"He who cheats us is not one of us" [Abu Dawud, Ahmad, Ibn Maja]

[This is a part of a *hadith* narrated by Ahmad on the authority of Abu Hurairah.]

This is how he (saw) would confront the cheaters and punish them. He (saw) would also order the traders to speak the truth in trading and to give charity. Ahmad narrated from Qays Ibn Abi Gharza Al Kanani, he said: "We used to buy cargo in Madina and

we would call ourselves brokers, so the Messenger of Allah (saw) came out to us and called us with a better name, he (saw) said:

« يا معشر التجار، إن هذا البيع يحضره اللغو والحلف، فشوُبوه بالصدقة »

'O traders, verily the selling entails talking and the taking of oaths, so do mix it with *Sadaqa*".

Ahmad also narrated from Abu Al-Minhal:

« أن زيد بن أرقم والبراء بن عازب كانا شريكين، فاشتريا فضة بنقد ونسيئة، فبلغ ذلك النبي صلى الله عليه وسلم فأمرهما أنّ ما كان بنقد فأجيزوه، وما كان بنسيئة فردوه »

"That Zayd ibn Arqam and Al-Bara' Ibn Azib were partners, so they both bought some silver with cash on the spot and by credit. This news reached the Messenger of Allah (saw) so he ordered: 'Where the payment is made on the spot there is no harm, and where it is sold on loan it must be rejected.'"

Thus the Messenger (saw) prevented them from the riba of credit. All this is the judicial remit of the *Hisba*. Calling the judiciary that settles the disputes that may harm the interests of the community as the *Hisba* which is in fact a technical term referring to a specific task carried out in the Islamic State, i.e. To control the traders and skilled workers lest they cheat in their trade, or their work or their products, or lest they use the weights and measures incorrectly, or any other type of action that may affect the interests of the community. And this is the very action that the Messenger of Allah (saw) demonstrated and ordered to be observed, and personally applied judgement upon, as mentioned in the *Hadith* of Al-Bara' Ibn Azib, where he ordered both parties to abstain from

selling silver by credit. The Messenger of Allah (saw) has also appointed Sa'id ibn Al-As as a muhtasib (judge of hisba) at the market of Makkah after its conquest as it came in Tabaqaat of ibn Sa'ad and in Al-Isti'ab to Ibn Abdul Barr. Therefore, the evidence of hisbah is the sunnah. Umar ibn Al-Khattab had also appointed Al-Shifa, a woman from his clan, who is Umm Sulaiman ibn Abi Hathmah, as a market judge (inspector) i.e. a judge of *Hisba*; and he also appointed Abdullah ibn Utbah a judge on the market of Al-Madinah, as Malik mentioned in Al-Muwatta' and Al-Shafi'i in Al-Musnad. He also himself used to deal with the judiciary of the *Hisba*, and walk around in the markets just like the Messenger of Allah (saw). The Khaleefah went on dealing with the *Hisba* until the days of Al-Mahdi who set up a special organisation to the Hisbah which became one of the organisations of Judiciary. At the time of Al-Rasheed, *Muhtasib* (judge of *Hisba*) used to go around in the markets, checking the weights and measures, and look into the traders' transactions.

As for the evidence for the judge of *Madhalim* (unjust acts), this is derived from Allah's (swt) saying:

﴿فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ﴾

"If you dispute about something refer it to Allah and the Messenger." [TMQ 4:59].

This came immediately after Allah's (swt) saying:

﴿ يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُوْلِي الأَمْرِ مِنْكُمْ﴾

"O you who believe obey Allah and obey the Messenger and those in authority from among you." [TMQ 4:59].

Therefore, any dispute between the citizens and the people in authority should be referred to Allah and His Messenger i.e. to the

rule of Allah. This necessitates the presence of a judge to give judgement on this dispute, and this is the judge of *Madhalim*. Evidence is also derived from the action and saying of the Messenger of Allah (saw). However, the Messenger of Allah (saw) did not appoint a specific judge for the *Madhalim* over the whole State, nor did the Khulafa' *Rashidoon* after him, for they took charge of the *Madhalim* themselves as was the case with Ali Ibn Abi Talib. He did not however assign a specific time or a special style for the *Madhalim;* he simply dealt with a *Madhlima* (an unjust act case) as it happened, so it was just part of his general duties. This approach remained the same until the days of Abdul Malik Ibn Marwan; he was the first Khaleefah to introduce a specific time for the *Madhalim*; and when one of these *Madhalim* was ambiguous to him, he used to refer it to his judge to deal with it. Then the Khaleefah began to appoint deputies to look into people's complaints, and a special system was then introduced for the *Madhalim*, which was known as the **"House of Justice" (*Dar-ul-Adl*)**. This is permissible in terms of having a special judge for *Madhalim*, because anything that falls under the mandatory powers of the Khaleefah, he is allowed to appoint deputies to perform that on his behalf. It is also permissible to have a specific time and a specific style because all this falls under the *mubah* (permissible acts).

Conditions required for a judge

Anyone taking up the post of judge must be a Muslim, free, mature, sane, just, a *Faqih* (learned scholar), and aware of how to apply the rules to the events. As for the person who takes up the judiciary of *Madhalim*, in addition to the conditions mentioned, he must also be male and a *Mujtahid* (legist), just like the supreme judge (*Qadhi-ul-Qadhah*), because this post is in fact judiciary and ruling, for he judges over the ruler and executes the *Shari'ah* upon him. Therefore he must be male in addition to the other conditions of the post of judge; one of which is to be a *Faqih*. Furthermore, he has to be a *Mujtahid*, because part of the *Madhalim*

which he may be required to look into is whether the ruler has ruled by other than that what Allah has revealed, i.e. ruled by a law that has no *Shari'ah* evidence to back it, or in case the evidence he used does not relate to the event, and only the *Mujtahid* can deal with such *Madhlima*. Therefore if he were not a *Mujtahid*, he would be judging without having knowledge; and that is forbidden. Therefore, in addition to the conditions of the ruler and those of the judge, he also should be a *Mujtahid*.

The appointment of Judges

It is permitted to appoint the judge, the *Muhtasib* (judge of public rights) and the *Mudhalim* in a general capacity, to judge in all matters all over the State. It is also permitted to appoint them in a specific capacity, whether geographic or according to a certain type of judiciary. This would be in accordance with the action of the Messenger of Allah (saw), for he appointed Ali Ibn Abi Talib as judge over Yemen, and Mu'adh Ibn Jabal as judge over an area of Yemen, and he also appointed Amr Ibn-al- A'as as judge in one specific issue.

Provisions of the judges

Al-Hafiz mentioned in Al-Fath: provision (*rizq*) is that which the imam provides from the baiyt ul-mal to whoever discharges the Muslims interests. Judiciary is one of the responsibilities which requires to be provided for from the bait ul-mal, and it is a function for which the State employed them in the interests of the Muslims. Any effort in the interest of the Muslims, which the State employs to undertake in accordance with *shar'*, then the one who undertakes it is entitled to a wage, whether this work was worship or otherwise. The evidence for this is that Allah (swt) assigned a share for those who collect the *sadaqat*, so He (swt) says:

﴿وَالْعَامِلِينَ عَلَيْهَا﴾

"And those who collect them." [TMQ 9:60]

Abu Dawud also narrated, Ibn Khazeemah in his saheeh and Al-Bayhaqi and Al-Hakim, and he said it is sound on the conditions of the two sheikhs, and agreed by Al-Dhahabi, from Bareedah that the Messenger of Allah (saw) said:

« أيما عامل استعملناه وفرضنا له رزقاً، فما أصاب بعد رزقه فهو غلول »

"Any employee we employed and assigned him provision, any provision he takes more than what he is assigned is deception (g*hulool).*" [2]

Al-Mawardi said in Al-Hawi: "Judiciary is allowed to take provision for it from bait ul-mal, because Allah (swt) has assigned to the collectors of *Sadaqat* (zakah) a share from it. Umar had also appointed Shurayh and assigned to him provision of one hundred dirhams monthly. When Khilafah reached Ali he assigned to him five hundred dirham every month; besides Zayd ibn Thabit took a wage for judiciary". However, Al-Bukhari commented on that saying: "Shurayh used to take a wage over judiciary". Al-Hafiz said commenting on this comment: "As regarding the report of Shurayh, Said ibn Mansoor told us that Sufyan informed us from Mujahid from Ash-Sha'by, he said: Masrooq did not take a wage on judiciary, and Shurayh used to take." Al-hafiz mentioned in Al-Fath: "Ibn ul-Mundhir mentioned that Zayd ibn Thabit would take a wage on Judiciary". Ibn Sa'ad narrated from Nafi', he said: "Umar ibn Al-Khattab employed Zayd ibn Thabit for judiciary and he assigned provision to him." The *sahabah* made *ijma'*, as well as those who came after them on allowing provision for judiciary from the bait-ul-mal. Al-Hafiz said in Al-Fath: "Abu Ali Al-

[2] Tarikh Baghdad 4/371

Karabeesi said: As understood by all the scholars, including the *sahabah* and those that followed them it is not wrong for the judge to take provision for judging. This is the opinion of the jurists of the various provinces, I don't know of any difference between them. Masrooq however disliked that, but no one prohibited it." Ibn Qudamah mentioned in Al-Mughni: "Umar wrote to Mu'adh ibn Jabal and Abu Ubaydah when he sent them to Al-Sham, to find out some good people amongst you and use them for judiciary, do your utmost for them, provide them and satisfy them from the wealth of Allah."

The forming of tribunals

It is not allowed for a tribunal to be formed of more than one judge who has the power to render judgement; it is however permitted for one or more judges to be present with him but they would not have the right to judge, but merely to be consulted or to voice an opinion, and their opinion would not be binding.

This is because the Messenger of Allah (saw) never appointed two judges to deal with one matter, rather he (saw) appointed one judge for each matter. Besides, the judiciary is the conveying of the *Shari'ah* rule by way of enforcement, and the *Shari'ah* rule concerning one Muslim cannot vary, for it is the rule of Allah, and the rule of Allah is one. It is true that its interpretation may vary, but concerning the Muslim from the practical side it remains one and it never varies. When the judge conveys the rule of Allah in the matter at hand by way of enforcement, this conveying must be one, for it is the conveying of the rule of Allah by way of compulsion. Thus it would be acting upon the rule of Allah, and the rule of Allah from a practical point of view does not vary, even if the understanding does vary. Therefore, it is forbidden to have more than one judge for the same case, i.e. in the same court. As for a country, it is permitted to have two separate courts dealing in all types of cases in one area, because the judiciary is delegated by the Khaleefah, so it is like the deputyship where plurality is permitted, thus it would be permitted to have several judges in one

area. If the disputing parties are unable to come to an agreement on which tribunal they should take their case to or which judge should look into their case, the choice of the plaintiff would outweigh that of the defendant and the case would be given to the judge of his choice, as he would be seeking his right and this outweighs the defendant.

It is not allowed for the judge to pass a rule except in the court; and the evidence and the oath can only be considered in the judicial court. This is because it has been reported on the authority of Abdullah Ibn- Zubair who said:

« قضى رسول الله صلى الله عليه وسلم أن الخصمين يقعدان بين يدي

الحاكم »

"**The Messenger of Allah has ordered that the two disputing parties should sit before the judge."** [Abu Dawud]

This hadith is narrated by Abu Dawud, and it demonstrates the way in which the judicial process should be conducted, and it is a lawful form in itself, i.e. there must be a specific way in which the judicial process is to be conducted, which is for the two disputing parties to sit before the judge, and this would be the judicial court. Therefore this is a condition for the validity of the judicial procedure, i.e. that there ought to be a special place where the judgement is to be conducted for it to qualify as a legitimate judgement, and this would be where the two disputing parties will sit before a judge. This is backed by the *hadith* of Ali (ra) when the Messenger of Allah (saw) said to him:

« إذا جلس إليك الخصمان، فلا تكلَّم حتى تسمع من الأخر كما سمعت

من الأول »

"O Ali, if two disputing parties sat before you, do not judge (in favour) of either of them until you hear what the other party has to say as you have heard the first one." [Ahmad]

It also indicates a special form where he (saw) said:

« إذا جلس إليك الخصمان »

"If two disputing parties sat before you".

Therefore the judicial court is a must if the judgement is to be valid, and is also a must for the oath to be considered, for the Messenger of Allah (saw) said:

« اليمين على المدعى عليه »

"The oath must be given by the defendant," [Bukhari & Muslim] as narrated by Al-Bukhari on the authority of Ibn Abbas.

He would not be considered as a defendant except in a judicial court. The same applies for the evidence: it cannot be considered except before a judicial court, for the Messenger of Allah (saw) said:

«...ولكن البينة على من المدعي، واليمين على من أنكر »

"It is the plaintiff who should provide the evidence, and the oath is obliged for the one who contests." As narrated by Al-Bayhaqi.

And he cannot be considered a plaintiff except before a judicial court.

It is permitted to have various levels of court according to the type of cases. Thus it would be permitted to have some judges confined to dealing with specific cases to a certain extent, and to refer other cases to other courts.

This is because, the judiciary is a delegated by the Khaleefah and it is just like the deputyship, with no difference at all. In fact, the judiciary is one form of deputyship, which can be general and can also be specific. Therefore, it is permitted to have a judge appointed to deal in specific cases only, in which case he would not be allowed to deal with other than those cases specified. It is also permitted to appoint another judge to look into all sorts of cases including those mentioned, even in the same location, or to look into cases other than those mentioned. Therefore it is permitted to have various levels of tribunal, and Muslims had this in the past; Al-Mawardi wrote in his book entitled *Al Ahkam Al Sultaniyya*: **"Abu Abdullah Al Zubayri said: For sometime, the *Ameers* here in Basra used to appoint a judge at the central mosque (Al-Masjid Al-Jami'), they called him the judge of the mosque. He used to judge in disputes involving sums not exceeding twenty Dinars and two hundred Dirhams, and he used to impose the maintenances. He would not go beyond the place assigned to him and the limits given to him."** The Messenger of Allah (saw) delegated others on his behalf in the judiciary; he appointed Amr Ibn Al A'as to look into one case, and he appointed Ali Ibn Abi Talib over the judiciary in Yemen with powers to look into any case. This indicates that it is permitted to have a specific and general judiciary.

There are no courts of appeal and there are no courts of cessation, so the judiciary, as far as the method by which the cases are treated, is one and the same. If the judge pronounces a sentence, it becomes binding, and the sentence of another judge will not under any circumstances reverse it. The divine principle states: **"ijtihad is not nullified by similar ijtihad."** So, a mujtahid is not proof against another mujtahid; so it is invalid to have courts

that nullify the verdicts of other courts.

However, if the judge abandons ruling by the *Shari'ah* and judged according to a rule of disbelief, or if he judged by a rule that contradicts a *Shari'ah* text from the Book and the *Sunnah* or the *Ijma'* of the *Sahabah,* or he issued a verdict that contradicts with the reality, such as if he judged on somebody as a deliberate killer, then the real killer appeared. In such cases, the verdict of the judge is reversed. This is because the Messenger of Allah (saw) said:

« من أحدث في أمرنا هذا ما ليس منه فهو ردّ »

"Anyone who invented something in our matter (deen) that which is not from it, it is rejected", as narrated by Al-Bhukari and Muslim on the authority of A'isha.

It is also narrated by Jabir ibn Abdullah

« أن رجلاً زنى بامرأة، فأمر به النبي صلى الله عليه وسلم فجُلد. ثم أُخبر أنه محصن فأمر به فَرُجم »

"That a man committed adultery with a woman, so the Prophet (saw) ordered that he be lashed. Later on he was informed that he was married, so he ordered that he be stoned". Malik ibn Anas also narrated, that he said: "I was informed that a women was brought to Uthman (ra) where she gave delivery after six months so he ordered her to be stoned**,** Ali (ra) said to him: 'It is not valid for her to be stoned, because Allah (swt) says**:**

﴿وَحَمْلُهُ وَفِصَالُهُ ثَلاَثُونَ شَهْرًا﴾

"The carrying of the (child) to his weaning is period of thirty months" [TMQ 46:15]

and He (swt) says:

﴿وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلاَدَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُتِمَّ الرَّضَاعَةَ﴾

"*The mother shall give suckle to their children for two whole years, for them who desire to complete the term."* [TMQ 2:233]

Thus the pregnancy period is six months, so she should not be stoned. Accordingly Uthman (ra) ordered that she be returned back, but he found that she had already been stoned." Abdur Raziq narrated from Al-Imam Ath-Thawri that he said "If a judge gave a verdict opposite to the Book of Allah or the *Sunnah* of Allah (saw) or anything where there is an *Ijma'* over it, then another judge after him may reverse it".

However, the responsibility of reversing these verdicts is for the Judge of Madhalim.

The Muhtasib

The *Muhtasib* is the judge who deals in all the cases which concern the common rights and which do not have a plaintiff, as long as these cases do not fall under the penal code (*Hudud*) and the criminal laws (*Jinayat*).

This is the definition of the judge of *Hisba*, which is a definition deduced from the *hadith* relating to the heap of food. The Messenger of Allah (saw) discovered dampness in the heap of food so he ordered that the damp food be displayed on the top so that people could see it. So this was a public right on which the Messenger of Allah looked into, and judged that the wet food

should be displayed at the top to prevent cheating. This applies to all the public rights or interests that are of this nature. It does not include the penal code or the criminal law, for they are not of the same sort, and for they are disputes between people in the first place.

The mandatory powers of the Muhtasib

The *Muhtasib* has the power to judge on the offence as soon as he learns about it, and this can take place on the spot and at any location; he does not need to be in a judicial court. He will have at his disposal a number of police staff to execute his orders and to apply the sentence on the spot.

A judicial court would not be required for the *Muhtasib* to look into the case at hand. He passes the judgement the moment he is sure that the offence took place, and he has the power to judge at any place and at anytime, whether in the market, in the house, while riding or in the car during the day or night. This is because the evidence that confirms the need to have a judicial court in order to deal with a case does not apply to the *Muhtasib*, because the *hadith* which confirmed this condition states:

« إن الخصمين يقعدان بين يدي الحاكم »

"The two disputant parties sit down before the judge." [Hakim & Bayhaqi]

And he(saw) said:

« إذا جلس إليك الخصمان »

"If the two disputing parties sat before you." [Ahmad &

Hakim]

This is not applicable to the judge of *Hisba*, as there is no plaintiff and no defendant; there is rather a public right that has been violated, or a violation of the *Shari'ah*. Besides, when the Messenger of Allah (saw) looked into the case of the heap of food, he was walking in the market at the time and the food was displayed for sale; he (saw) did not summon the vendor to him, but as soon as he detected the offence he dealt with it on the spot. This indicates that the cases of *Hisba* do not require a judicial court.

The *Muhtasib* has the right to select deputies for himself. They should fulfill the requirements of the *Muhtasib*, and he is allowed to assign them to different places. Those deputies would have the power to carry out the duties of the *Hisba* in the areas to which they have been assigned, and in the cases for which they have been delegated.

This depends on whether the appointment of the *Muhtasib* includes a clause that gives him powers to appoint deputies for himself, i.e. to delegate deputies who would act on his behalf, i.e. the right of deputyship. In case he was not given such right of deputyship, i.e. the right to appoint deputies to him, then he has no such right of appointment.

The Judge of Madhalim

The judge of *Madhalim* is a judge appointed to remove every *Madhlima* (unjust act) perpetrated by the State against any person, whether this person were a citizen of the State or a person living under its authority, and whether this *Madhlima* were perpetrated by the Khaleefah or those working under him, be they rulers or civil servants.

This is the definition of the judge of *Madhalim*. The origin of the judiciary of *Madhalim* is derived from reports referred to the Messenger of Allah (saw), where he described the unjust acts perpetrated by the ruler while ruling over the subjects as being a *Madhlima*. Anas reported:

« غلا السعر على عهد الرسول صلى الله عليه وسلم فقالوا: يا رسول الله، لو سعَّرت، فقال: «إن الله هو الخالق القابض الباسط الرزاق المسعر، وإني لأرجو أن ألقى الله ولا يطلبني أحد بمَظْلِمَة ظلمتها إياه في دم ولا مال

«

"Prices soared during the time of the Messenger of Allah (saw) so they said to him: 'O Messenger of Allah why don't you introduce pricing?' he said: 'Verily Allah is the Creator, the Recipient, the Extender of wealth , the Provider, and the Pricer, and I hope that I will meet Allah (swt) without having anyone accusing me of having perpetrated a *Madhlima* against him be it in blood or in money.'" This is narrated by Ahmad.

He (saw), therefore judged pricing as being a *Madhlima*, for if he had done it, i.e. introduced pricing, he would have acted without authority. He (saw) also made the issues that affect the common rights which the State organises for the people as part of the *Madhalim*. If an administrative system was set up to regulate one of the interests of the citizens, and a citizen considered that the system is unjust for him, then his case is examined by the Madhalim. This is because it is a complaint against an administrative system of one of the interests of the citizens set up by the State. This is like the irrigation of farming lands by common water according to a schedule regulated by the State.

The evidence to this is the complaint presented by the Ansari against the regulation set up by the State for irrigating by water the first, then the next, i.e. to the first that water passes first through his land. The Ansari wanted Al-Zubayr to let the water flow to him before Al-Zubayr watered his land (since the water passed first through the land of Al-Zubayr). However, Al-Zubayr refused and the case was raised with the Messenger of Allah (saw). He judged between them letting Al-Zubayr water lightly and sending the water to his Ansari neighbour (i.e. without letting Al-Zubayr taking his full turn, as a sign of help to the Ansari). The Ansari did not accept that; he rather wanted the water to reach his land first before Al-Zubayr watered his land. Then he said to the Messenger of Allah (saw) that his judgement was as such because Al-Zubayr was his cousin (and this is a serious comment against the Messenger of Allah (saw) but it is understood that the Messenger of Allah forgave him for he witnessed Badr as reported by Al-Bukhari).

At that point the Messenger (saw) judged that Al-Zubayr takes his full right in irrigation, which is to irrigate his land till water reaches to the root of the wall or the root of the tree, which was explained by the scholars that the water has to rise in the land till it covers the leg of the person. The whole hadith is narrated by Muslim through Urwah ibn Al-Zuabayr

« أَنَّ رَجُلاً مِنْ الأَنْصَارِ خَاصَمَ الزُّبَيْرَ عَنْدَ رَسُولِ اللهِ صلى الله عليه وسلم فِي شِرَاجِ الْحَرَّةِ الَّتِي يَسْقُونَ بِهَا النَّخْلَ، فَقَالَ الأَنْصَارِيُّ سَرِّحِ الْمَاءَ يَمُرُّ، فَأَبَى عَلَيْهِمْ، فَاخْتَصَمُوا عِنْدَ رَسُولِ اللهِ ، فَقَالَ رَسُولُ اللهِ صلى الله عليه وسلم لِلزُّبَيْرِ: «اسْقِ يَا زُبَيْرُ ثُمَّ أَرْسِلِ الْمَاءَ إِلَى جَارِكَ» فَغَضِبَ الأَنْصَارِيُّ فَقَالَ يَا رَسُولَ اللهِ صلى الله عليه وسلم أَنْ كَنَ ابْنَ عَمَّتِكَ فَتَلَوَّن وَجْهُ نَبِيِّ اللهِ ثُمَّ قَالَ: «يَا زُبَيْرُ اسْقِ ثُمَّ احْبسِ الْمَاءَ حَتَّى يَرْجِعَ إِلَى الْجَدْرِ» فَقَالَ

الزُّبَيْرُ وَاللَّهِ إِنِّي لأَحْسِبُ هَذِهِ الآيَةَ نَزَلَتْ فِي ذَلِكَ [فَلاَ وَرَبِّكَ لاَ يُؤْمِنُونَ حَتَّى يُحَكِّمُوكَ فِيمَا شَجَرَ بَيْنَهُمْ ثُمَّ لاَ يَجِدُوا فِي أَنفُسِهِمْ حَرَجًا] »

"That Abdullah ibn Al-Zubayr told him that a man from the Ansar brought his dispute with Al-Zubayr to the Messenger of Allah (saw) regarding Shiraj Al-Harrah with which they irrigate the palm trees. The Ansari said (to Al-Zubayr) let the water flow, but he refused. They brought their dispute to the Messenger of Allah (saw). The Messenger of Allah (saw) said to Al-Zubayr: "You irrigate first O Zubayr and then let the water go to your neighbour." The Ansari became angry and said O Messenger of Allah, it is because he is your cousin. The colour of the face of the prophet of Allah (saw) changed and then he (saw) said: "O Zubayr! Irrigate and then hold the water till it reaches the root of the wall". Al-Zubayr said: By Allah, I think this verse has been revealed regarding that matter. *"By your Lord, they will not be true believers until they make you judge in their disputes, and they do not find discontent towards your judgement'".* (Shiraj Al-Harrah is the water river at Al-Harrah. Abu Ubayd said there are two rivers in Al-Madinah that flow with the rain water and people competed with each other regarding it. The Messenger of Allah (saw) decided regarding it that the first would irrigate first, which means the landlord at the beginning of the river would irrigate first and then let the water to the next and so on).

Therefore, any *Madhlima* that occurs against any person, whether perpetrated by the ruler, or as a result of the State's organisations or directives, would be considered as a *Madhlima*, as gathered from the two *ahadith*. The matter would be referred to the Khaleefah to deal with or to whomever the Khaleefah appoints as a judge of *Madhalim* to deal with such matters on his behalf.

The appointment and the removal of the judges of Madhalim

The judge of *Madhalim* is appointed by the Khaleefah, or by the supreme judge. This is because the *Madhalim* is part of the judiciary, for they are the conveying of the *Shari'ah* rule by way of enforcement, and all the types of judges must be appointed by the Khaleefah. This is confirmed by the Messenger of Allah's actions, for he (saw) used to appoint the judges. All this serves as evidence that it is the Khaleefah who appoints the judge of *Madhalim*, yet the supreme judge can appoint the judge of *Madhalim* if the Khaleefah made provisions for this in his appointment clause. It is allowed for the main court of unjust acts *(mahkamat ul-Madhalim)* in the centre of the State to examine only the *madhalim* that occur from the Khaleefah, his assistants and the supreme judge. While the task of the branches of the court of unjust acts in the *wilayat* examine the *madhalim* occurring from the *wali*s and other State employees. The Khaleefah has the right to give the central court of unjust acts the authority of appointing and removal of the *madhalim* judges in the branch *madhalim* courts that follow it in the *wilayat*.

The Khaleefah is the one who appoints and removes the members of the main *mahkamat ul-madhalim* in the centre of the State. As for the removal of the head of the central *mahkamat ul-madhalim*, i.e. the *madhalim* judge responsible in examining the removal of the Khaleefah, it should in principle be the right of the Khaleefah to remove him, as it is he who has the right to appoint him like all the judges. However, there is a case which is most likely if it is left to the Khaleefah the power of removing him during it, then this power would lead to haram. In such situation the principle of "the means that leads to haram is haram" would apply to it; where the strong likelihood is enough for applying this principle.

This means when there is a case raised against the Khaleefah or his assistants or his supreme judge (in case the Khaleefah was given the mandatory power of appointing and removing the *madhalim* judge). This is because keeping the mandatory power of removing

the *madhalim* judge in the hand of the Khaleefah in this case would influence the verdict by the judge; and accordingly it would limit the capability of the judge for removing the Khaleefah or his assistants for example. This mandatory power of removing the judge in this case is a means for haram, i.e. keeping it in the hand of the Khaleefah in this case is haram.

As for the remaining cases, the rule remains as it is, i.e. the power of removing the *madhalim* judge is left to the Khaleefah exactly as his appointment.

The Mandatory Powers of the Judge of *Madhalim*

The court of *Madhalim* has the mandatory power to look into any *Madhlima*, whether the *Madhlima* was perpetrated by the government civil servants, or related to a contradiction of the *Shari'ah* by the Khaleefah, or related to the meaning of a legislative text in the constitution, the canon or the various *Shari'ah* rules adopted by the Khaleefah, or related to the imposing of a tax, or any other matter.

Judiciary of *madhalim* regarding any *madhlima* connected to some civil servants, the Khaleefah's violation of the *Shari'ah* rules, the meaning of any legislative text, the constitution or the canons within the adoption of the Khaleefah, the imposition of any tax; or related to the State's oppression of its citizens in terms of the seizure of their properties by force, or its transgression in terms of the collected properties (from them) or reducing the salaries of the employees and the army or delaying their payment. In all of these types of *madhlimah* there is no necessity of a judicial sitting to look into the case, to summon the defendant, and nor to have a plaintiff. It rather has the right to look in the *madhlimah* even if there was no complaint.

This is because the evidence that proves the stipulation of the

presence of judiciary sitting to examine the case does not apply to the judiciary of *madhalim*. This is because it has no plaintiff, as the presence of a plaintiff is not necessary. The court of *Madhalim* has the right to look into a *Madhlama* even if nobody filed a claim or because it not necessary for the plaintiff to attend, since it examines the case without the need of the attendance of the defendant, as it studies the case. Therefore, the evidence regarding the necessity of a judicial court does not apply to that. This is due to what Abu Dawud and Ahmed narrated from Abdullah ibn Az-Zubair, he said: "The Messenger of Allah (saw) ordered that

« أن الخصمين يقعدان بين يدي الحاكم »

"The two disputing parties sit before the judge." [Hakim & Bayhaqi]

and his (saw) saying to Ali (ra):

« إذا جلس إليك الخصمان »

"If the two disputing parties sat before you." [Ahmad & Hakim].

Therefore, the court of *Madhalim* reserves the right to look into the *Madhlima* as it occurs without any restrictions such as time, place or court sitting. However, due to the standing of this court as far as its mandatory powers are concerned, it has always been surrounded by the elements of prestige and grandeur. In the times of the *Sultans* in Egypt and Ash-Sham, the Council of the *Sultan* where the *Madhalim* used to be dealt with used to be known as the "House of Justice", where the *Sultan* used to appoint deputies to act on his behalf, and the judges and the *Faqihs* also used to attend. Al-Maqreezi mentioned in his book entitled: Al-Sulook Ila Ma'arifa-ti- Douwal Al-Mulook (The way to know the States of the

kings), that the *Sultan* Al-Malik Al-Salih Ayyub appointed deputies to act on his behalf in the house of justice, where they sat to remove the *Madhalim,* and to gather with the witnesses, judges and the *Faqihs*. Therefore, there is no harm if the court of *Madhalim* had a splendid house, for this would be *Mubah*, especially if this reflected the might of justice.

Contracts, transactions and court verdicts before the establishment of the Khilafah

The contracts and transactions that are concluded, together with the courts' verdicts that are confirmed and executed before the establishment of the Khilafah are considered valid between their parties till the end of their execution before the Khilafah. Judiciary in the Khilafah will not repeal them and nor start them again. No new lawsuits would be accepted regarding them after the establishment of the Khilafah.

Two cases will be excluded of that:

1. If the case that was confirmed and its execution was finished still have a continuous effect that contradicts Islam.
2. If the case is related to somebody who harm Islam and the Muslims.

The evidence for not repealing the contracts, transactions and lawsuits that were confirmed and their implementation finished before the establishment of the Khilafah, and nor raising them again in other than the above mentioned two cases is that the Messenger (saw) did not return back after the conquest of Makkah to his house from which he emigrated. Uqayl ibn Abi Talib had, according to the laws of Quraysh, inherited the houses of his relatives who embraced Islam and emigrated. He had disposed of them and sold them, including the house of the Messenger (saw). It was said at that time to the Messenger (saw): "In which house

you are going to stay?" He (saw) said:

« وهل ترك عقيل من رباع »

"Has Uqayl left any of our houses?" [Bukhari]

In another narration, he said:

« وَهَلْ تَرَكَ لَنَا عَقِيلٌ مِنْ مَنْزِلٍ »

"**Did Uqayl leave to us any house?**" [Bukhari & Muslim]

He had then sold the houses of the Messenger of Allah (saw), but the Messenger (saw) did not repeal them. The hadith is reported by Al-Bukhari through Usamah ibn Zayd, he said:

"That he said on the day of the conquest, O Messenger of Allah, where do you want to stay tomorrow? The prophet (saw) said: **Did Uqayl leave to us any house?**" It was also narrated that when Abu Al-Aas ibn Al-Rabee' embraced Islam and emigrated to Al-Madinah. His wife Zaynab, daughter of the Messenger of Allah (saw) had then embraced Islam and emigrated after Badr, while he remained Mushrik in Makkah. The Messenger of Allah (saw) returned to him his wife, Zaynab, daughter of the Messenger without renewing her marriage contract to him. This was the recognition of the marriage contract concluded during the phase of Jahiliyyah. Ibn Majah reported through Ibn Abbas (ra):

« أن رسول الله صلى الله عليه وسلم رد ابنته – أي زينب – على أبي العاص ابن الربيع بعد سنتين بنكاحها الأول »

"The Messenger of Allah (saw) sent back his daughter, i.e. Zaynab to Abu Al-Ass ibn Al-Rabee' after two years based on her first marriage contract".

As regarding raising the lawsuits that have continuous effect contradictory to Islam, after the Islamic state was established the Messenger (saw) cancelled the usury remaining on the people and they were only obliged to pay the principle amount. This means that after the establishment of *Dar ul-Islam*, the remaining usury upon people will be cancelled. Abu Dawud narrated through Sulaiman ibn Amru from his father, he said:

"I heard the Messenger of Allah (saw) say in the farewell pilgrimage:

« ألا إن كل ربا من ربا الجاهلية موضوع لكم رؤوس أموالكم لا تَظلِمون ولا تُظلَمون »

"Behold! Any usury from the days of Jahiliyyah is cancelled. You are only entitled to your capitals, where you do not wrong (others) and nor be wronged."

Moreover, those who were married to more than four wives according to the laws of Jahiliyyah were obliged after *Dar ul-Islam* to hold to four only. Al-Tirmidhi reported through Abdullah ibn Umar that Ghaylan ibn Salamah Al-Thaqafi embraced Islam while having ten wives in Jahiliyyah, and they embraced Islam together with him.

« فأمره النبي صلى الله عليه وسلم أن يختار أربعاً منهن »

"The prophet (saw) commanded him to choose four of them."

Therefore, the contracts that have continuous effect contradictory to Islam, such effect is removed after the establishment of the Khilafah. This removal is obligatory.

If for example a Muslim woman was married to a Christian before Islam, then after the establishment of the Khilafah this contract will be cancelled in accordance with the rules of *shar'*.

As regarding starting lawsuits related to those who harmed Islam and Muslims, this is because the Messenger (saw), when he conquered Makkah he declared the blood of some people to be shed with impunity as they used to harm Islam and Muslims in Jahiliyyah. He asked their blood to be shed even if they hung themselves to the curtains of the ka'bah. This is despite the Messenger of Allah's (saw) saying:

« الإسلام يجب ما قبله »

"Islam removes that which comes before it", as narrated by Ahmad and Tabarani from Amru ibn Al-Aas.

This means the one who harmed Islam and Muslims are excluded from this hadith.

Since the Messenger (saw) forgave some of them later on, such as his forgiving of Ikrimah ibn Abu Jahl, therefore the Khaleefah is allowed to start a lawsuit against them or forgive them. This applies to those who tortured Muslims for saying the truth or defamed Islam. The hadith:

« الإسلام يجب ما قبله »

"Islam removes that which comes before it", does not apply to them, for they are excluded from it, and a case is started against

them according to the view of the Khaleefah.

In other than these two cases the contracts concluded before the establishment of the Khilafah, together with the transactions and lawsuits are not cancelled and nor started as long as they were confirmed and their implementation finished before the establishment of the Khilafah.

Thus, if a man for example was sentenced with two years of imprisonment for a charge of breaking the doors of a school, and he finished the two years before the establishment of the Khilafah and he left the prison. Then after the establishment of the Khilafah he wanted to start a case against the one that imprisoned him for that charge because he views that he did not deserve imprisonment. Such case is not accepted, because it happened, and a sentence was given for it and its implementation finished before the establishment of the Khilafah. He has to consider his matter with Allah, anticipating reward from Him.

If however, this man was sentenced for ten years, of which two have been completed, and the Khilafah was established; in this case the Khaleefah is allowed to examine the case, either by cancelling the sentence of punishment from its origin, thus letting him come out of the prison as free of the charge, or to be satisfied with the period he already spent, and he comes out of the prison. It is also possible to study the remaining time of the sentence taking into consideration the relevant divine rules and the interest of the citizens, particularly the issues related to the rights of the people, such that it removes the discord.

10. Administrative System (People's Welfare)

Running the government's business and the people's affairs is carried out by offices, departments and administrations, whose task is to ensure the management of the State's business and the discharge of the people's interests. Each office (*Maslaha*) will be headed by a general manager, and each department (*Da'ira*) and administration (*Idara*) will be headed by a director who will run its affairs and be directly responsible for it. These directors will be answerable to the general director in charge of their offices, departments or administrations from a professional side, and answerable to the *Wali* and the '*Amil* with regards to abiding by the rules and general regulations.

The Messenger of Allah (saw) used to discharge the affairs and appoint secretaries for the administration. Thus, the Messenger (saw) used to discharge the affairs of the people in Al-Madinah, solve their problems and organise their relations, secure their needs and direct them to that what suited them. All of these matters are of the administration issues that ease their life without problems or complication.

In matters of education, The Messenger of Allah (saw) made the ransom of the unbelieving prisoners of war teaching ten Muslim children, where ransom was in return of the spoils, which is a property of the Muslims. Thus, securing education is from the interests of the Muslims.

In healthcare, the Messenger of Allah (saw) was given a doctor as a gift, but he assigned him to the Muslims. The fact that the Messenger of Allah (saw) received a gift and he did not use it, nor did he take it, rather assigned it to the Muslims is evidence that healthcare is one of the interests of the Muslims.

In regards to employment, the Messenger of Allah (saw) directed a man to buy a robe and then an axe and collect firewood and sell to

the people instead of begging from them, where somebody might give him while another would resist. Thus, solving the problems of work was also one of the Muslims' interests. Ahmad reported a hadith and Al-Tirmidhi approved it, he said:

« أن رجلاً من الأنصار أتى النبي صلى الله عليه وسلم فسأله، فقال: أما في بيتك شيء؟ قال: بلى... قال: ائتني بهما، فأتاه بهما، فأخذهما رسول بيده فقال: من يشتري هذين؟... قال رجل: =الله صلى الله عليه وسلم أنا آخذهما بدرهمين، فأعطاهما إياه وأخذ الدرهمين، فأعطاهما للأنصاري وقال: اشترِ بأحدهما فانبذه إلى أهلك، واشترِ بالآخر قدوماً فائتني به، فأتاه به، فشد فيه رسول الله صلى الله عليه وسلم عوداً بيده ثم قال: اذهبْ واحتطبْ وبعْ، فلا أرينك خمسة عشر يوماً، ففعل، فجاء وقد أصاب عشرة دراهم... »

"A man from the Ansar came to the prophet (saw) and asked him (sadaqah): The Messenger (saw) said: Don't you have any thing in your house? He said: Yes. He said: Bring them to me. He brought them to him. The Messenger of Allah (saw) took them in his hand, and said: Who would buy these two? A man said: I would take them for two dirhams. He gave them to him and took the two dirhams. He gave them to the Ansari and said: Buy food with one and give it to your family and buy with the other an axe and bring it to me. He brought it to him. Then he tied with his hand a rod to it and said: Go and collect firewood and sell, and do not let me see you for fifteen days. He did that, and came back having ten dirhams".

Al-Bukhari reported that the Messenger of Allah (saw) said:

« لأن يأخذ أحدكم أحبلة، فيأتي بحزمة من حطب على ظهره، فيبيعها، فيكف بها وجهه، خيراً له من أن يسأل الناس، أعطوه أو منعوه »

"It is better for any one of you to take a rope and bring a bundle of firewood on his back, and sell it, and thus protect with it his face (of begging) than to beg the people, who might give him or reject."

In the issue of roads, the Messenger of Allah (saw) organised the roads at his time by making the road of seven arms in case of dispute. Al-Bukhari narrated from Abu Hurairah:

« قضى النبي صلى الله عليه وسلم إذا تشاجروا في الطريق الميتاء بسبعة أذرع »

"The prophet (saw) decided in case there was a dispute the road would be of seven arms".

The narration by Muslim says:

« إذا اختلفتم في الطريق جعل عرضه سبعة أذرع »

"If you had dispute over the road make its width seven arms".

This was administrative organisation at that time, and if there was need for wider than that it is allowed according to the opinion of Shafi'i.

The Messenger of Allah (saw) has also prevented transgression

against the road. Tabarani reported in Al-Sagheer:

« من أخذ من طريق المسلمين شبراً طوقه الله يوم القيامة من سبع أراضين »

"Whoever took of the road of Muslims a hand span, Allah would encircle him from seven earths on the Day of Judgement."

In matter of irrigation, Al-Zubayr disputed with a man from Al-Ansar regarding irrigating from a stream of water flowing in their lands. The Messenger of Allah (saw) said:

« اسقِ يا زبير ثم أرسل الماء إلى جارك »

"O Zubayr irrigate and then send the water to your neighbour".

There is agreement over the hadith, and the words are from Muslim.

Thus, the Messenger of Allah (saw) used to run the affairs of the Muslims and solve their problems easily and simply, without complication. He would seek the help of some *Sahabah* in conducting that, thus the managing of the affairs of the people is an organisation entrusted with the Khaleefah or he appoints over it a competent manager who takes charge of it. This is what we adopt so as to reduce the burden of the Khaleefah, particularly since the affairs of the people have increased and branched out. Accordingly, there will be an organisation for the people's affairs entrusted with a competent manager, and run by styles and means that facilitate for the citizens their living, and provide to them the necessary services without complication, rather easily and simply.

This system consists of administrations, departments and

directorates. The administration is the overall management of any government affair, such as citizenship, transportations, money, coinage, education, health, agriculture, employment, roads and others. This administration will undertake the management of its own affairs and all the departments and directorates under its control. The department will run their own affairs and those of the directorates under its control. The directorate will also run its own affairs and the affairs of all the sections and divisions under its control.

The purpose of establishing these administrations, departments and directorates is to manage the State's affairs and to discharge the people's interests.

In order to guarantee the smooth running of these administrations, departments and directorates, directors must be appointed to take charge of them. For each administration, a general director will be appointed to take direct charge of it and to supervise all the departments and directorates that come under it. For each department and for each directorate a manager is appointed to be directly in charge of his department or directorate and to be responsible for the sections and divisions affiliated to it.

The Administrative System is a Style and Not Ruling

The administrative system is a style used to perform a task, and is also one of the means used for that, so it does not require specific evidence. It is sufficient for it to have general evidence that indicates its origin. It would be wrong to say that these styles are human actions, which should therefore be conducted according to the divine rules. This is because the evidence for these actions has come in regards to their origin in a general form, thus it includes all actions that branch out from that origin, unless there is divine evidence that relates to a subsidiary action, in the case of which the action must follow that evidence. For instance Allah (swt) says:

﴿وَآتُوا الزَّكَاةَ﴾

"And pay out the Zakat" [TMQ 73:20]

Which is a general evidence. Then the evidences came regarding the subsidiary actions which branched out from it, such as the amount of *Nisab*, the *Zakat* collectors and the categories of things from which *Zakat* is to be taken. All these are actions derived from ***"And pay out the Zakat"***. There are no evidences to be found about the manner by which the *Zakat* collectors have to collect the *Zakat;* for example do they go riding or walking? Do they hire other employees to help them or not? Do they collect it according to records? Do they have to establish headquarters where they would all meet? Would they have warehouses where they would store everything they had collected? Would these houses be underground or built like grain houses? Would the cash *Zakat* be collected in bags or coffers? All these actions and the like are, in fact, subsidiary actions originating from ***"And pay out the Zakat."*** They are all covered by the general evidence as there are no specific evidences for them; and this is the case with all the styles. Thus, the style is an action subsidiary to an action i.e. the origin that has general evidence. Therefore, the style does not require evidence, because the evidence of its origin serves as evidence for it as well.

Therefore, the administrative styles can be taken from any system unless there is a specific text that prevents taking a particular administrative style. Otherwise, it is allowed to take the administrative styles if they were suitable to run the work of the administrative organisations and to discharge the affairs of the people. This is because the administrative style is not a divine rule that requires divine evidence. This is the reason of that Umar (ra) took the style of the *deewan* for recording the names of the army and the citizens for the sake of distributing the funds to them, which come from the public & the state properties, in form of

grants or salaries.

Abid Ibn Yahya reported on the authority of Al-Harith Ibn Nufayl that 'Umar consulted the Muslims about the recording of *Dawawin*, and Ali Ibn Abi Talib suggested: 'Divide all the funds you collect each year and do not keep any of them.' 'Uthman Ibn 'Affan said: 'I see that there are a lot of funds being distributed amongst people, and if they are not counted in order to know who has taken and who has not, I fear that the matter could get out of hand.' Upon this Al-Waleed Ibn Hisham Ibn-l-Mughira said: 'I was in Ash-Sham and I noticed that its kings had introduced a *Deewan* and recruited soldiers, so why don't you do the same?' 'Umar took his advice and summoned 'Aqeel Ibn Abi Talib and Makhrama Ibn Nufayl and Jubayr Ibn Mat'am who were young men from Quraysh and said: 'Prepare a house to house census.'

When Islam reached Iraq, the *Deewan* of payments and funds collection continued as before. The *Deewan* of Ash-Sham was in Latin for it had been part of the Roman Empire, and the *Deewan* of Iraq was in Persian for it had been part of the Persian Empire. In the time of 'Abdul Malik Ibn Marwan the *Deewan* of Ash-Sham was converted to Arabic, i.e.. in the year 81 AH. Several *Dawawin* were then set up according to necessity and depending on the need for them in running the people's interests. *Dawawin* for the armed forces were introduced for registration and grant purposes, and others were introduced to record the fees and claims of all transactions. Another *Deewan* was introduced for the '*Amils* and *Walis* to record each appointment and each removal and other *Dawawin* were used in the treasury (***Baiyt-ul-Mal***) to record revenues and expenses and so on. The introduction of a *Deewan* was according to the need for it, and its style varied over the years due to the difference in styles and means.

A chief was appointed for each *Deewan* along with other employees, and in some cases the chief was allowed to appoint the employees himself, and they were sometimes appointed for him.

A *Deewan* will thus be set up according to need, along with the styles and means that would help discharging that need. It is permitted to have different styles and means according to the area, or *Wilayah* or country.

With regards to the responsibility of such civil servants, they are hired employees and at the same time citizens. At a professional level they are answerable to their own directorate manager, and as citizens they are answerable to the rulers whether these are *Walis*, the assistants or the Khaleefah. They have to abide by the *Shari'ah* rules and the administrative systems.

The Policy of Administration of the Interests

The policy of administration of the interests is based on the simplicity of the system, speed in processing the tasks and the competence of the administrators. This is taken from the nature of processing the interest, for the person who requires a service needs to have it quickly and efficiently processed. The Messenger of Allah (saw) said:

« إن الله كتب الإحسان في كل شيء، فإذا قتلتم فأحسنوا القِتْلَة، وإذا ذبحتم فأحسنوا الذبح ...»

"Verily Allah has enjoined the perfection to everything; so when you kill, do so in a good way and when you slaughter, slaughter in a good way" narrated by Muslim from Shaddad ibn Aws.

Therefore, the perfection in executing the actions is ordered by the *Shari'ah*. To achieve this, the administration should observe three qualities. 1, the simplicity of the system which would lead to the

ease of processing, whereas complication would lead to hardship. 2, the speed in processing the transactions which would spare people of unnecessary delay. 3, the ability and competence of the employees. This is required to perfect the task and is even required for the performance of the task itself.

Those who are Eligible to work in the State's Department

Anyone who holds citizenship and is competent, man or woman, Muslim or non-Muslim is eligible to be appointed as a director of any administration or to be an employee in it.

This is taken from the rules of hiring (*Ijara*) where it is permitted to hire any person whether Muslim or non-Muslim. This is because the evidences for hiring are in general form. Allah (swt) says:

﴿فَإِنْ أَرْضَعْنَ لَكُمْ فَآتُوهُنَّ أُجُورَهُنَّ﴾

"And if they suckled for you, do give them their wage". [TMQ 65:6]

This is general evidence.

Bukhari narrated from Abu Hurairah from the Messenger of Allah (saw), who said:

قال الله تعالى: «ثلاثة أنا خصمهم يوم القيامة... ورجل استأجر أجيراً فاستوفى منه ولم يعطه أجره»

"Allah (swt) said: I will challenge three people on the day of Judgement… and a man who employed a labourer, he received from him (the work) but did not give him his wage".

This evidence is also general.

The Messenger of Allah (saw) did himself once hired a man from Banu Ad-Deel who was a non-Muslim, which indicates that it is permitted to hire a non-Muslim just as it is to hire a Muslim. It is also permitted to hire a woman just as it is to hire a man, following the generality of the evidences. Therefore, it is permitted for a woman to be a director of a government department or to be one of its employees, and it is permitted for a non-Muslim to be a director of a government department or an employee in that department, for they are all hired staff, and the evidences about hiring are general.

11. Bayt ul-Mal (The State Treasury)

Bayt ul-Mal is a proper noun of genitive construction, where it could mean the place where the State's revenues are kept till they are spent. It could also mean the authority responsible of receiving and spending the funds entitled for Muslims.

Since we have already adopted that the wali is given specific authority that excludes the army, judiciary and funds. Thus, the whole army will be a central department (presided by *Ameer ul-Jihad*). The judiciary will be a central department (known as judiciary), and the entire funds form a central department (known as *bayt ul-mal*), which is separate from any other organisation in the State, and follows the Khaleefah as the other organisations.

This is besides the several evidences that the *bayt ul-mal* used to be directly managed by the Messenger (saw), or the Khaleefah, or whoever he appointed to preside over it. The Messenger of Allah (saw) sometimes would deal directly in managing the funds, in the treasury. He would receive the funds, distribute them and spend them in their due place. He would sometimes appoint somebody to take care of that. This is what the Khulafa'a *rashidoon* did after him, where they either they took charge of that themselves or delegated others to do it on their behalf.

The Messenger of Allah (saw) used to place the funds in the mosque, as Al-Bukhari narrated from Anas, he said:

« أُتي النبي صلى الله عليه وسلم بمال من البحرين، فقال: انثروه في المسجد... »

"Some funds were brought to the prophet (saw) from Bahrain. He said: Spread it in the mosque".

He would sometimes put in one of the rooms of his wives, as it was narrated by Al-Bukhari from Uqbah, he said:

«صليت وراء النبي صلى الله عليه وسلم بالمدينة العصر، فسلم ثم قام مسرعاً، فتخطى رقاب الناس إلى بعض حجر نسائه، ففزع الناس من سرعته، فخرج عليهم، فرأى أنهم عجبوا من سرعته، فقال: ذكرت شيئاً من تبر عندنا، فكرهت أن يحبسني، فأمرت بقسمته»

"I prayed Asr behind the prophet (saw) in the Madinah. He gave salam at the end of the prayer and stood up quickly. He crossed the lines of the Muslims behind him going to some of his wives' rooms. The people were amazed at his speed. He came back to them, and saw they were surprised at his speed. He said: I remembered some gold dust with us, so I abhorred that it would hold me back, and I ordered it should be divided".

He otherwise kept them in his treasury as Muslim narrated from Umar, which includes:

«فقلت لها: أين رسول الله صلى الله عليه وسلم ؟ قالت: هو في خزانته في المشربة... فنظرت ببصري في خزانة رسول الله صلى الله عليه وسلم فإذا أنا بقبضة من شعير نحو الصاع، ومثلها قرظاً في ناحية الغرفة وإذا أَفيق معلق. قال: فابتدرت عيناي. قال: ما يبكيك يا ابن الخطاب؟ قلت: يا نبي الله، وما لي لا أبكي وهذا الحصير قد أثر في جنبك، وهذه خزانتك لا أرى فيها إلا ما أرى... »

"So I said to her: Where is the Messenger of Allah (saw)? She said: He is in the treasury in the wooden oriel. I gazed in the treasury of the Messenger of Allah (saw), and I suddenly saw an amount of barley of about one saa' (a small cubic measure) and an equal amount to that of tree fruits used for juice in one side in the room. I saw as well as an untanned skin hanging in the room. He said: My eyes wept. He said: What does make you weep, son of Al-Khattab? I said: O prophet of Allah! Why should I not weep when this mat has influenced your side and this is your safe in which I do not see except that which I see".

At the time of the Khulafa'a *Rashidoon*, the place in which funds were kept came to be called *bayt ul-mal*. Sa'ad mentioned in Al-Tabaqaat from Sahl ibn Abu Hathmah and others: "Abu Bakr used to have a house in Al-Sanh not guarded by any body. So it was said to him: Why do you not put some body to guard it? He said: It has a lock. He used to give out that which is in it till it becomes empty. When he moved to the Madinah, he moved it and made it in his house." Hinad narrated in Al-Zuhd through good narration from Anas, he said: "A person came to Umar and said: O *Ameer ul-Mu'mineen*! Support me for I want to go in Jihad. Umar said to a person: Hold his hand and take him to the *bayt ul-mal* so as to he takes the funds he wants." Al-Shafi'i narrated in Al-Umm, which was corrected by Ibn Hajar from Abdullah ibn Wadee'ah, he said: "Salim, the servant of Abu Hudhayfah was a servant to a woman from us called Salma ibnt Ye'aar, she freed him unrestricted in Jahiliyyah. When he was killed in Al-Yamamah, his heritage was brought to Umar ibn Al-Khattab So he called upon Wadee'ah ibn Khidham and said: This is the heritage of your servant, and you deserve it more. He said: O *Ameer ul-Mu'mineen*. Allah made us no more in need of him. Our woman has freed him unrestricted; so we do not want to bring disgrace to ourselves, (or to bring loss upon us) from his matter. So, Umar put his heritage wealth in the *bayt ul-mal*." Al-Bayhaqi and Al-Darimi narrated, and Ibn Hazm corrected that "Sufyan ibn Abdullah ibn Rabee'ah Al-Thaqafy

found a leather bag and brought to Umar ibn Al-Khattab He said: Announce it for one year; and if it was recognised then give it, otherwise it is yours. No body recognised it, so he met him in the next year and mentioned it to him. Umar said: It is yours, for the Messenger of Allah (saw) ordered us of doing that. He said: I do not want it. Umar took it and put in *bayt ul-mal*." Al-Darimi narrated from Abdullah ibn Amru, he said: "A servant passed away at the time of Uthman without having a relative. So, he ordered that his wealth be put in *bayt ul-mal*." Ibn Abdul-Birr narrated in Al-Istidhkar from Anas ibn Seereen "that Ali used to divide the funds till *bayt ul-mal* became empty. It would then be scattered for him and he would then sit in it."

This is in regards to the first meaning of *Bayt ul-mal*, which is the place. As regarding the second meaning, which is the responsible authority, this is necessitated by the fact that the funds are sometimes not kept in a place, such as like the lands, oil wells, gas wells, mines, and the charity funds that are taken from the wealth and paid to its deserved people without being kept in a place. They also used the *bayt ul-mal* to mean sometimes the responsible authority as narrated by Al-Bayhaqi, Ahmad in Al-Musnad, and Abdul-Raziq in His Musnaf, from Lahiq ibn Humayd "Ibn Mas'ood was sent over judiciary and *bayt ul-mal*". It would not mean that Umar sent him as a door man to *bayt ul-mal*, rather with responsible authority of collecting and spending the funds. This is the same meaning as narrated by Ibn Al-Mubarak in Al-Zuhd from Al-Hasan, when the ameers of Al-Basrah came with Abu Mousa Al-Ash'ary and requested from him to assign food for them. He said in concluding his words to them: "O folk of *ameers*! I have assigned to you from *bayt ul-mal* two sheep and two gareeb (a patch of arable land)", thus which meant the responsible authority.

The one who disposes the revenues and expenses of *bayt ul-mal* is the Khaleefah.

The Messenger of Allah (saw) was the one who received the

donations of Uthman to the army of hardship ('usrah) in his lap. Ahmad narrated and Al-Tirmidhi narrated and said hasan and ghareeb, and Al-Hakim narrated it and corrected it, Al-Dhahabi agreed with him, from Abdur Rahman ibn Samrah, he said:

«جاء عثمان رضي الله عنه إلى النبي صلى الله عليه وسلم بألف دينار حين جهز جيش العسرة ففرغها عثمان في حجر النبي صلى الله عليه وسلم ، قال فجعل النبي يقلبها ويقول: ما ضر عثمان ما عمل بعد هذا اليوم، قالها مرارا»

"Uthman came to the prophet (saw) with one thousand dinar when he prepared the army of the hardship (ghazwah of Tabuk) and he emptied them in the lap of the prophet (saw). He said the prophet (saw) started to turn them around and say: Uthman will not be harmed by any work he does after today, and he said that many times".

He used sometimes to divide them by himself. Al-Bukhari narrated from Anas:

«أتي النبي صلى الله عليه وسلم بمال من البحرين فقال انثروه في المسجد... فلما قضى الصلاة، جاء فجلس إليه، فما كان يرى أحداً إلا أعطاه... فما قام رسول الله صلى الله عليه وسلم وثَمَّ منهوا درهم»

"Funds from Bahrain were brought to the prophet (saw). He said spread them in the mosque. When he finished the prayer, he sat down close to them and left nobody he saw without giving him. So, when the Messenger of Allah (saw) stood up there was no single dirham left of them."

Abu Bakr took responsibility of dividing by himself the funds

coming from Bahrain. Al-Bukhari narrated from Jabir, he said:

«قال لي رسول الله صلى الله عليه وسلم: لو قد جاء مال البحرين، لقد أعطيتك هكذا وهكذا وهكذا أي ثلاثاً. فلما قبض رسول الله صلى الله عليه وسلم وجاء مال البحرين أم أبو بكر منادياً فنادى: من كان له عند رسول الله صلى الله عليه وسلم دين أو عِدة فليأتنا، فأتيته فقلت إن رسول الله صلى الله عليه وسلم قال: لي كذا وكذا، فحثا لي ثلاثاً... »

"The Messenger of Allah (saw) said: If funds came from Bahrain, I would give you this way and this way and this way, i.e. three times. When the Messenger of Allah (saw) passed away and the funds came from Bahrain, Abu Bakr ordered some body to call: Whoever has some debt or something with the Messenger of Allah (saw) let him come to us. So I went to him and said the Messenger of Allah (saw) said: For me is this and this, so he gave me three times."

It was mentioned above in hadith of Sufyan Al-Thaqafy regarding the leather bag which he found and announced it: "Umar took it and put it in *bayt ul-mal*". Al-Shafi'i narrated in Al-Umm, he said: "More than one of the scholars told us that when the spoils of Iraq reached Umar ibn Al-Khattab the trustee of *bayt ul-mal* told him let me put them in bayt ul-mal. He said: No! By the Lord of the Ka'bah; it will not be kept in any house till it is divided. So he ordered it should be put in the masjid, and leather mats were put on top of it and men from Al-Muhajireen and Al-Ansar guarded it. In the morning, Al-Abbas ibn Abdul Muttalib and Abdur Rahman ibn Awf went out with him, he was either holding the hand of one of them, or one of them was holding his hand. When they saw him, they removed the leather mats away from the funds. So, he saw a scene he never saw before. He saw the gold, sapphire, chrysolite and pearl sparkling, so he cried. One of them said to

him: By Allah! This is not a day of crying, rather a day of praising and delight. He said: By Allah! I did not think of it your way. Rather, such funds will not increase in any people except their harm falls between them. Then he turned to the Qiblah, rose up his hands and said: O my Lord! I seek protection with you from being allured, for I hear You saying:

﴿ سَنَسْتَدْرِجُهُمْ مِنْ حَيْثُ لاَ يَعْلَمُونَ﴾

"We lead them on from whence they do not know". [TMQ 7:182]

Then he said: Where is Suraqah ibn Ja'sham? He was brought to him while his arms were hairy and slim. He gave him the two bracelets of Kisra. He said: Wear them, and he did. He said then: Say Allahu akbar. He said: Allahu akbar. He said: Say Alhamdulillah who wrested them from Kisra ibn Hirmiz and dressed them to Suraqah ibn Ja'sham, a Bedouin from Bani Midlij. He started to turn over the funds with a stick and said: Indeed the one who rendered that is honest. A man said to him: Let me tell you, you are the trustee of Allah (*ameen ullah*), and they render to you what you rendered to Allah. So, if you reveled they would revel. He said: You said the truth; then he distributed it". We mentioned earlier the hadith of Abdullah ibn Amru as reported by Al-Darimy "A servant passed away at the time of Uthman without having a relative. So, he ordered that his wealth be put in bayt ul-mal." This is besides the hadith of Anas ibn Seereen in Al-Istidhkar 'that Ali used to divide the funds till bayt ul-mal became empty. It would then be scattered for him and he would sit in it."

The Messenger of Allah (saw) sometimes would appoint one of his companions regarding the division of the funds, or he used to appoint him over some of the issues of the funds. Al-Bukhari narrated a hadith from Uqbah that the Messenger of Allah (saw) said:

«ذكرت شيئاً من تبر عندنا، فكرهت أن يحبسني، فأمرت بقسمته»

"I remembered some gold dust with us, so I abhorred that it would hold me back, so I ordered that it should be divided".

The hadith of ibn Shihab, as reported by Ibn Sheebah through a narration praised by Al-Hafidh ibn Hajar Al-Asqalany, Al-Mundhiry and Al-Haythamy says:

«أن رسول الله صلى الله عليه وسلم دخل خزانة بلال التي يضع فيها الصدقات، فوجد فيها صبرة من تمر، فقال: ما هذا التمر يا بلال؟ قال: يا رسول الله، أخذتها لنوائبك. قال: أفأمنت أن تصبح ولها في جهنم بخار؟ أنفق ولا تخش من ذي العرش إقلالاً أو إقتارا»

"The messenger of Allah (saw) entered the treasury of Bilal in which he put the sadaqaat and found in it a heap of dates, so he said: What are these dates, O Bilal? He said: O Messenger of Allah, I took it for your misfortunes. He said: Do you feel safe from waking up and finding to it fume in Jahannam? Spend and do not feel fear of reduction or stinginess from the Owner of the Throne."

This hadith as well says:

«إن عبد الرحمن بن عوف ﷺ كان يلي صدقات الإبل والغنم في عهد رسول الله صلى الله عليه وسلم وكان بلال ﷺ يلي صدقات الثمار، وكان محمية بن جزء يلي الخمس». وقال خليفة: «وعلى نفقاته بلال»

"Abdur Rahman ibn Awf (ra) used to take charge of the sadaqaat of camels and sheep during the time of the

Messenger of Allah (saw), and Bilal (ra) would take charge of the sadaqaat of fruits; while Mahmiyyah ibn Juz' used to take charge of the fifth (of the Messenger of Allah and his household)". And Khaleefah said: 'And Bilal was responsible for his expenses".

Ibn Hibban narrated in the saheeh from Abdullah ibn Lahy Al-Hoozany, he said: "I met Bilal, the mua'zzin of the Messenger of Allah (saw) and said: O Bilal! What was the expenditure of the Messenger of Allah (saw)? He said: He did not have anything. I was the one who took care of that since he was sent as a messenger till he (saw) passed away. If a Muslim came to him and saw him not dressed he ordered me to rush and borrow some money so as to buy him a cloak to dress him and also feed him". Muslim narrated from Abi Rafi' the servant of the Messenger of Allah (saw), he said:

«استسلف رسول الله صلى الله عليه وسلم بكراً فجاءته إبل من إبل الصدقة، قال أبو رافع فأمرني رسول الله صلى الله عليه وسلم أن أقضي الرجل بكره، فقلت لم أجد في الإبل إلا جملاً خياراً رباعياً، فقال رسول الله أعطه إياه، فإن خيار الناس أحسنهم قضاء»

"The Messenger of Allah (saw) borrowed a young camel. Camels of the sadaqah reached him, Abu Rafi' said the Messenger of Allah (saw) ordered me to repay the man his young camel. I said I did not find in the camels except a four years fine camel. The Messenger of Allah (saw) said give it to him, for the best people are those who best in repayment".

It is also mentioned in the hadith of Ibn Abbas, which is agreed upon by the four books:

«أن رسول الله صلى الله عليه وسلم لما بعث معاذاً إلى اليمن قال: ... فإن هم أطاعوك، فأعلمهم أن الله افترض عليهم صدقة تؤخذ من أغنيائهم فترد على فقرائهم، فإن هم أطاعوك لذلك، «فإياك وكرائم أموالهم، واتق دعوة المظلوم فإنه ليس بينها وبين الله حجاب»

"That when the Messenger of Allah (saw) sent Mu'adh to Yemen, he said: If they obeyed you then inform them that Allah has obliged upon them a sadaqah which is taken from their wealthy people and given to their poor. If they accepted that from you, then avoid taking the best of their wealth, and protect yourself of the imprecation of the oppressed, for there is no curtain between it and Allah".

It is also reported in the two saheeh from Abu Hurairah "that the Messenger of Allah (saw) sent Umar (ra) to collect the sadaqah".

"The Khulafa'a *rashidoon* followed him in his method; so they used to appoint some other people to run the affairs of funds. Ibn Ishaq and Khaleefah narrated, they said: "Abu bakr appointed Abu Ubaidah ibn Al-Jarrah in charge of *bayt ul-mal*, and then he sent him to Ash-Sham". Al-Dhahabi said commenting on the life of Mu'ayqeeb 'Abu Bakr and Umar appointed him in charge of *bayt ul-mal*". Ibn Ishaq mentioned in a narration praised by Al-Hakim as the author of Al-Tarateeb Al-Idariyyah (the administrative arrangements) from Abdullah ibn Al-Zubayr, he said: "And he wrote to Abu Bakr, and he assigned *bayt ul-mal* to him, and Umar ibn Al-Khattab consented him to that", meaning Abdullah ibn Al-Arqam. Ibn Sa'ad narrated in Al-Tabaqaat and Ibn Hajar in Al-Isabah that the treasurer of Umar was his servant Yasar ibn Numayr. Ahmad narrated in his Musnad and Abdul-Razzaq in Al-Musannaf, from Lahiq ibn Hameed, he said: "And he sent Ibn Mas'ood in charge of judiciary and *bayt ul-mal*", meaning to Al-Kufah. Khaleefah narrated from Malik ibn Anas from Zayd ibn

Aslam "that Umar appointed Abdullah ibn Arqam in charge of bayt ul-mal". Ibn Khuzymah reported in his saheeh from Urwah ibn Al-Zubayr "that Abdul-Rahman ibn Abdul-Qaree said: I was in charge of *bayt ul-mal* at the time of Umar ibn Al-Khattab".

Ibn Hajar narrated in Al-Fath in context of speaking about the virtues of Abdullah ibn Mas'ood: "And he was appointed by Umar and Uthman in charge of *bayt ul-mal* in Kufah". Al-Jahshayaree mentioned in Al-Wuzaraa' wal-Kuttab: "Abdullah ibn Arqam ibn Abd Yaghooth, one of the scribes of the prophet, used to assume on his behalf the authority over *bayt ul-mal*", meaning Uthman. Al-Hakim mentioned in Al-Mustadrak from Al-Zubayr ibn Bakkar: "Abdullah ibn Al-Arqam ibn Abd Yaghooth was in charge of bayt ul-mal at time of Umar and the beginning of the authority of Uthman till he passed away; and he had some companionship (with the Messenger)". Ibn Abdul-Birr said in Al-Istee'aab: "Zayd ibn Thabit was in charge of *bayt ul-mal* during the Khilafah of Uthman; Zayd used to have a slave called Waheeb, Uthman saw him helping them in *bayt ul-mal*, so he said: Who is this? Zayd said: A slave to me. Uthman said: I see that he helps the Muslims, and he is entitled for a right, and I allocate to him. So he allocated to him two thousand. Zayd said: By Allah, you cannot allocate two thousand to a slave, so he allocated to him one thousand". Al-Sadfee mentioned in the book about the scholars of Egypt and the companions of the Messenger of Allah (saw) who entered it, he said: "Abu Rafi' was referred after that to Ali ibn Abu Talib, so he put him in charge of *bayt ul-mal* in Al-Kufah". Ibn Abdul-Birr said in Al-Istee'aab: "Ubaydullah ibn Abu Rafi' was a treasurer and secretary to Ali". Al-Ainee mentioned in Umdat ul-Qaari': "that Abdullah ibn Wahb Al-Suwaa'ee, Ali used to honour him, love him and trust him, so he put in charge of *bayt ul-mal* in Al-Kufah". Ali appointed Ziyad in charge of Al-Basrah. Al-Jahshiyaree said: "When he left Al-Basrah, he put him in charge of Al-Kharaaj and *Deewan "*.

Bayt ul-mal can be divided into two parts:

Revenues: It includes three *Deewan*s:

- ***Deewan* of spoils and kharaj:** This includes the spoils, kharaj, lands, jizyah, booties and taxes.
- ***Deewan* of public property:** This includes the oil, gas, electricity, minerals, seas, rivers, lakes, springs, forests, pastures and hima (protected lands).
- ***Deewan* of Sadaqaat:** This includes zakah of money, merchandise, harvest and fruits, camels, cows and sheep.

Expenditure: This includes eight *deewans*:

- ***Deewan* of Khilafah house.**
- ***Deewan* of the State's services.**
- ***Deewan* of grants.**
- ***Deewan* of Jihad.**
- ***Deewan* of expenses of sadaqaat.**
- ***Deewan* of expenses of public property.**
- ***Deewan* of emergency.**
- ***Deewan* of general budget, general accounting and general inspection.**

12. Media (Al-I'laam)

Media is of the important matters for the Da'wa and the State. It is not one of the interests (masaalih) of the people that is under the department of people's affairs. It is rather directly linked to the Khaleefah as an independent organisation, the same as any other of the State's organisations.

The presence of a distinguished information policy that presents Islam strongly and effectively will provoke the minds of the people to turn towards Islam, and to study and think of it. It also facilitates the annexation of Muslim lands to the Khilafah State. Furthermore, there are many matters of media that are closely related to the State, and they cannot be published without the Khaleefah's instruction. This is manifested in the military matters and related issues, such as movement of the armies, and the news of victory and defeat and the military industries. This type of news must be linked directly to the Imam so as to decide which of which has to be concealed and which of which must be announced and advertised.

The evidence to this is the Book and the Sunnah. As regarding the Book, it His (swt) saying:

﴿وَإِذَا جَاءَهُمْ أَمْرٌ مِنَ الأَمْنِ أَوْ الْخَوْفِ أَذَاعُوا بِهِ وَلَوْ رَدُّوهُ إِلَى الرَّسُولِ وَإِلَى أُوْلِي الأَمْرِ مِنْهُمْ لَعَلِمَهُ الَّذِينَ يَسْتَنْبِطُونَهُ مِنْهُمْ﴾

"And if any tidings, whether of safety or fear, come to them, they announce it, whereas if they had referred it to the Messenger and those in authority, then those among them who are able to think out of the matter would have known it." [TMQ 4:83]

The subject of the verse is the news.

As regarding the Sunnah it is the hadith of Ibn Abbas about the conquest of Makkah as it is reported by Al-Hakim in Al-Mustadrak, and was described as saheeh based on the condition of Muslim, and Al-Dhahabi agreed to that. The hadith mentions:

«وقد عميت الأخبار على قريش، فلا يأتيهم خبر رسول الله ولا يدورن ما هو صانع»

"The news were obscured to Quraysh; so the news of the Messenger of Allah (saw) would not reach them, and nor they knew what he was planning regarding them."

There is also the *mursal* (hadith not directly connected to the Messenger (saw), with the name of a companion missing) of Abu Salamah as reported by Ibn Abu Sheebah, which mentions:

«ثم قال النبي صلى الله عليه وسلم لعائشة: جهزيني ولا تعلمي بذلك أحداً، ... ثم أمر بالطوق فحبست، فعمى على أهل مكة لا يأتيهم خبر»

"Then the prophet (saw) said to Ayesha: Prepare (things for) me and do not tell any body of that. Then he ordered that roads are shut off, so people of Makkah were obstructed, and thus no news would reach them."

There is also the hadith of Ka'b which is agreed upon regarding the ghazwa of 'usra (Tabook), which says:

«ولم يكن رسول الله صلى الله عليه وسلم يريد غزوة إلا ورّى بغيرها حتى كانت تلك الغزوة غزاها رسول الله صلى الله عليه وسلم في حرّ شديد،

واستقبل سفراً بعيداً ومفازاً وعدواً كثيراً، فجلّى للمسلمين أمرهم ليتأهبوا أهبة غزوهم، فأخبرهم بوجهه الذي يريد»

"The Messenger of Allah (saw) never wanted a ghazwa without alluding to something else except in that ghazwa, which he made during a very hot weather, a distant place, a desert and a huge enemy. So, he explained to the Muslims their matter to be ready for their raid, and he thus informed them of the destination he wants."

There is also the hadith of Anas as reported by Al-Bukhari:

«أن النبي صلى الله عليه وسلم نعى زيداً وجعفراً وابن رواحة قبل أن يأتيهم خبرهم فقال: أخذ الراية زيد فأصيب، ثم أخذها جعفر فأصيب، ثم أخذها ابن رواحة فأصيب، وعيناه تذرفان حتى أخذها سيف من سيوف الله حتى فتح الله عليهم»

"The prophet (saw) announced the death of Zayd, Ja'far and Ibn Ruwaha before the news of their death reached him. He said: Zayd took the flag but he was killed, then Ja'far took it and he was killed, then Ibn Ruwaha took it and he was killed; he said that while he was crying. Lastly one of the swords of Allah took it till Allah granted them victory."

Some of the applications of this rule at the time of the *rashidoon* is that which is narrated by Ibn Al-Mubarak in the subject of Jihad, Al-Hakim reported in Al-Mustadrak and he described it as saheeh based on the condition of Muslim, which Al-Thahabi agreed to, from Zayd ibn Aslam from his father from Umar ibn Al-Khattab "that he was informed that Ubu Abaydah was surrounded and the enemy rallied against him. So, Umar wrote to him: Peace is upon you. After that, there is no any difficulty that befalls a believer

except Allah made to him a way out of it; and never a hardship would defeat two eases.

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا اصْبِرُوا وَصَابِرُوا وَرَابِطُوا وَاتَّقُوا اللَّهَ لَعَلَّكُمْ تُفْلِحُونَ﴾

"O you who believe! Endure, outdo all others endurance, be ready and observe your duty to Allah, in order that you may succeed." [TMQ 3:200]

He said: Abu Ubaydah wrote to him: Peace be upon you, after that Allah says in His Book:

﴿ اعْلَمُوا أَنَّمَا الْحَيَاةُ الدُّنْيَا لَعِبٌ وَلَهْوٌ وَزِينَةٌ وَتَفَاخُرٌ بَيْنَكُمْ وَتَكَاثُرٌ فِي الأَمْوالِ وَالأَوْلاَدِ ﴾

'Know that the life of this world is only play, and idle talk, and pageantry, and boasting among you, and rivalry in respect of wealth and children.' The verse [TMQ 57: 20]

He said: Then Umar went out holding his book, sat on the pulpit (mimbar) and read it to the people of Al-Madinah and said: O people of Al-Madinah! Abu Ubaydah alludes to you that you should show interest in Jihad."

The issues that are connected with the military news are the news of the negotiations, peace treaties and debates that take place between the Khaleefah or his deputy and the representatives of the kufr states. As an example to the negotiations is that which took place between him (saw) and the representatives of Quraysh in Al-Hudaybiah till the agreement was reached over the clauses of the peace. The example of his direct debates is his (saw) debate with the delegate of Jajran and calling them to curse each other in case we did not say the truth. This is also beside the debate of Thabit ibn Qays and Hassan to the delegate of Tameem based on the order of the prophet (saw). All of this was open without any secret

clause in it.

Though other types of news have no direct connection with the State, and they do not need the direct opinion of the Khaleefah regarding them, such as the daily news, the political, cultural and scientific programs and the international events, they however interfere with some details of the viewpoint in life, and with the view of the State towards the international relations. Therefore, the supervision of the State over these types of news differs from it over the first type of news.

Thereupon the organisation of information must contain two main departments:

The first: Its task is related to news that has connection with the State, such as the military matters, the military industry and international relations, etc.

The task of this department is the direct supervision of such news. So, such news is not broadcasted in the media means of the state or the special media means except after their presentation to the information organisation.

The second: is specified with the other news; and its supervision over them is not direct. The State's media means and the special media means do not need any permission for presenting such news.

Granting of permission to media means

Media means do not require any permission for work. Rather, every citizen in the Islamic State is allowed to set up any media means, whether readable, audible or visible. He only needs to inform the information organisation about the media means he establishes.

He also needs, as mentioned earlier, permission for publishing news connected with the State, as mentioned above. As regarding the other news he can publish it without previous permission.

In all cases, the owner of the media means is responsible for any information he publishes, and he will be accounted for any violation of the *shar'* like any other citizen.

The media (information) policy of the State

A law will be published that demonstrates the general guidelines of the information policy of the State, in accordance with the divine rules. The State would follow such policy for serving the interest of Islam and Muslims, and for building a cohesive and strong Islamic society, which adheres to the rope of Allah, and from which and in which righteousness shines. There will be no place in it for vicious and depraving thoughts, and nor for false and misguiding cultures. It will be an Islamic society that dismisses its wickedness and shines its goodness, and celebrates the praises of Allah, the Lord of the worlds.

13. Majlis ul-Ummah - The Council Of The Ummah

(Shura and accounting)

This is a Council formed by individuals representing the opinion of the Muslims at large, to which the Khaleefah can refer to in regards to consulting them on various issues. They in turn are the representatives of the *Ummah* in holding the rulers accountable. This is deduced from the Messenger of Allah's (saw) consultation with some men from the *Ansar* and the *Muhajireen* who represented their people. It is also derived from the Messenger's (saw) assigning some of his *sahabah* for shura, he used to refer to them more than to others for seeking an opinion, such as Abu Bakr, Umar, Hamza, Ali, Salman Al-Farisi, Hudhayfah,….

It is also deduced from the fact that Abu Bakr (ra) designated some men from the *Muhajireen* and the *Ansar* to refer to them seeking their opinion when something happened. The people of the *Shura* at the time of Abu Bakr (ra) were the *Ulama* and the people of *Fatwa*. Ibn Sa'ad reported from Al-Qasim that when something happened and Abu Bakr wanted to consult the people of opinion and the people of *Fiqh*, he called from the *Muhajireen* and the *Ansar*. 'Umar, 'Uthman, 'Ali, 'Abdur Rahman ibn 'Awf, Mu'aadh ibn Jabal, Ubai ibn Ka'ab and Zayd ibn Thabit. They all used to give their opinion during the Khilafah of Abu Bakr. People would also take their *Fatwa*. When 'Umar became Khaleefah he would also call these people. There are also evidences that call upon the Muslims to account the rulers. Muslims exercised such accounting as it happened at the time of Khulafa'a al-*rashidoon*. As the *ummah* is allowed to be represented in shura she is allowed to be represented in accounting. All of this indicates it is allowed to have a special council that represents the *ummah* in accounting and in the shura which is established by the text of the Quran and Sunnah. It is called: the council of the *ummah* because it represents the *ummah* in shura and accounting.

It is permitted for non-Muslim citizens to be members of the

Council, in order to file complaints against any injustice perpetrated against them by the rulers or against any mis-implementation of Islam upon them or the lack of services to them or the like.

The right of the Shura

Shura is a right of all the Muslims which the Khaleefah should fulfill. They are entitled to be consulted and the Khaleefah should refer to them and consult them. Allah (swt) says:

﴿ وَشَاوِرْهُمْ فِي الأَمْرِ فَإِذَا عَزَمْتَ فَتَوَكَّلْ عَلَى اللَّهِ ﴾

"And do consult them in the matter, and if you decide (on an action/on an opinion) put your trust in Allah" [TMQ 3:159]

Allah (swt) says also:

﴿ وَأَمْرُهُمْ شُورَى بَيْنَهُمْ ﴾

"And their matter is in consultation between them". [TMQ 42: 38]

The Messenger of Allah (saw) used to refer to people and consult with them. He (saw) consulted them on the day of Badr about the location of the battlefield, and he consulted them on the day of Uhud about whether to fight inside or outside Madina. On the day of Badr he took the advice of Al-Habab Ibn-al-Mundhir regarding a technical opinion voiced by an expert which he accepted. On the day of Uhud he accepted the opinion of the majority, despite the fact that his personal opinion was different.

'Umar Ibn Al-Khattab consulted the Muslims regarding the land of Iraq, whether to divide it among the Muslims because it was booty

or to leave it in the hands of its people with the condition that they paid its *Kharaj* with the land remaining the property of the Treasury. He then acted according to his own *ijtihad* and the majority of the *Sahabah* approved of it, so he left the land in the hands of its people and ordered them to pay the *Kharaj*.

The right of accounting

Besides, the Muslims have the right to be consulted by the Khaleefah, they must also account the rulers regarding their actions and practices. Allah (swt) obliged the Muslims to account the rulers, and He (swt) commanded them in a decisive form to account them and change them if they transgressed against the rights of the citizens, failed in their duties towards them or neglected any of their affairs, or violated the rules of Islam, or governed by other than the rules of Allah. It was narrated by Muslim from Um Salamah (ra) that the Messenger of Allah (saw) said:

«ستكون أمراء فتعرفون وتنكرون، فمن عرف برىء، ومن أنكر سلم، ولكن من رضي وتابع، قالوا أفلا نقاتلهم؟ قال: لا، ما صلّوْا»

"There will be ameers, you would agree on some of what they do and reject some. So, whoever acknowledged (the truth of what they do) he would be free (of sin), and whoever rejected (the wrong) he would be safe (of responsibility), but what about the one that accepted and followed? (He would not be safe). They said: Should not we fight against them? He said: No, as long as they pray."

Prayer here is indication of ruling by Islam.

Muslims, led by Umar, denied at the beginning the decision of Abu Bakr regarding the fight against the apostates.

Al-Bukhari and Muslim narrated from Abu Hurairah, he said: "When the Messenger of Allah (saw) passed away, and Abu Bakr (ra) became Khaleefah and some Arabs apostated, Umar (ra) said: How do you fight against the people when the Messenger of Allah (saw) said:

«أمرت أن أقاتل الناس حتى يقولوا لا إله إلا الله، فمن قالها فقد عصم مني ماله ونفسه إلا بحقه، وحسابه على الله»

"I have been commanded to fight against the people till they say la ilaha illa Allah. Whoever said it he would have his wealth and his blood protected from me except for its due right, and his account will be with Allah."

He said: By Allah, I will fight against the one who differentiated between the prayer and the zakah, for the zakah is a right due on the wealth. By Allah, if they refused to pay me a young she-goat they used to pay to the Messenger of Allah (saw) I would fight against them for refusing to pay it. Umar (ra) said: By Allah, it was Allah who soon opened the heart of Abu Bakr, so I knew it was the truth."

Bilal ibn Rabah and Al-Zuabir and others also rejected Umar when he did not divide the land of Iraq among the fighters. A bedouin also declined that Umar protected some land. Abu Ubayd narrated in Al-Amwal from 'Aameer ibn Abdullah ibn Al-Zubayr, I think from his father, he said: "A bedouin came to Umar and said: O ameer ul-mu'mineen. It is our land which we fought on it in jahiliyayh, and we embraced Islam while we were on it; so why do you protect it? He said: Umar bowed his head, and started to blow and twist his moustache. He would twist his moustache and blow when something worried him. When the bedouin saw that of him, he started to repeat the question to him. Umar said: The wealth belongs to Allah, and the people are the servants of Allah. By

Allah, if I do not assume the burden of something *fee sabeelillah* I would not have protected an inch of land". Umar had then protected some of the public property lands for the horses of Muslims (used in Jihad). A woman also challenged his forbiddance to the people of taking more than four hundred dirhams as mahr. She said to him: You have no right in that, O Umar. Have you not heard the saying of Allah (swt):

﴿ وَآتَيْتُمْ إِحْدَاهُنَّ قِنطَارًا فَلاَ تَأْخُذُوا مِنْهُ شَيْئًا ﴾

"And you have given one of them a sum of money (however great), take nothing from it". [TMQ 4: 20]

He responded by saying: A woman said the right and Umar did a mistake.

Ali (ra) also contested Uthman (ra) when he was *ameer al-mu'mineen* on his view of completing the hajj and umrah. Ahmad narrated through a saheeh narration from Abdullah ibn Al-Zubayr, he said: "We were with Uthman in Al-Juhfah, while some people from Al-Sham were with him including Habeeb ibn Maslamah Al-Fahree. Uthman said when it was mentioned to him concerning the *(tamattu')* umrah till hajj: The best for hajj and umrah is not to be both in months of hajj. It would be better to delay this umrah till you visit this house twice, for Allah (swt) made it spacious for goodness. Ali ibn Abu Talib was in the valley feeding his camels. He came to know of the view of Uthman, so he came till he stopped before Uthman and said: Do you turn to a sunnah recommended by the Messenger of Allah (saw) and a permission (rukhsah) Allah (swt) allowed to the servants in His Book, you restrict it to them and you forbid it, when it was permitted to a person of need and to a person of distant home? Uthman turned to the people and said: Did I forbid it? I did not forbid it. It was only a view I advised it; so whoever wills he can take it, and whoever wills he can leave it".

Therefore, the council of the *ummah* has the right of shura and is obliged of accounting.

It is thus clear the difference between the shura and accounting. Shura is seeking an opinion or listening to it before taking the decision; while accounting is objection after taking the decision or execution of the work.

Electing the members of the Council of the *Ummah*

The members of the *Ummah*'s Council are elected and not appointed. They are representatives of the people in the voicing of opinions, and the representative should be chosen by the person whom he represents and should never be imposed upon him. Since also the members of the *Ummah*'s Council are representatives of the people's opinions, whether they are individuals or groups; so to know the representative of people in a large area and the uncounted folk does not come about unless this representative is chosen by them. Moreover, the Messenger of Allah (saw) did not choose those whom he consulted based on their ability, competence and personalities; rather he chose them based on two points**:** because they were chiefs among their folks, regardless of their ability and competence; secondly, because they represented the *Muhajireen* and the *Ansar*. The reason for the presence of the people of the *Shura* is to represent the people. Therefore the tenet upon which the *Ummah*'s Council members are chosen should be: the representation of people, as was the case in the deliberate selection from the chiefs, and the representation of the groups as was the case in the deliberate selection from the *Muhajireen* and the *Ansar*. This representation of the individuals and groups who are uncounted cannot be achieved except by election. The members of the *Ummah*'s Council have to be therefore elected. As for the fact that it was the Messenger of Allah (saw), himself, who chose whom he consulted, this was because the area in question, Madina, was small and because the Muslims were known to him. In

contrast, in the second Bay'ah of Al-Aqaba, the Muslims who gave him the Bay'ah were not known to him and this is why he left the matter of choosing the chiefs to them, by saying:

«أخرجوا إليَّ منكم اثني عشر نقيباً يكونون على قومهم»

"Choose from among you twelve leaders who will be responsible for themselves and their people."

As reported in the *Seerah* of Ibn Hisham from Ka'ab ibn Malik.

We can thus conclude from the fact that the members of the *Ummah*'s Council represent the opinion of the Muslims at large, and since the reason (*'Illah*) for which the Council is founded is to represent the individuals and groups in voicing their opinions and in holding the rulers accountable, and since this cannot be achieved if the persons were not known, unless there was a general election. All of this proves that the members of the *Ummah*'s Council should be elected and not appointed.

The council of the *ummah*, method of election:

1. We mentioned during discussion of *wali*'s that we adopt election of a council to the *wilayah* that represents its people, and for two reasons: **The first** is to provide the necessary information to the *wali* about the situation and needs of the *wilayah*. The purpose of that is helping the *wali* in conducting his task in a way that provides a comfortable and secured life for the people of the *wilaya*, and facilitates the discharge of their needs and the provision of their services. **The second** is to express content or complaint of the governance of the *wali* to them. This is because the complaint of the majority of the council of the *wilaya* against the *wali* obliges his disposal. This means the reality of the council of the *wilaya* is administrative

for helping the *wali* by informing him of the reality of the *wilaya* and for expressing the content or complaint for him. All of this motivates him to improve his work. This council has other mandatory powers such as those of the council of the *ummah*, as explained below.

2. We adopt here setting up a council of the *ummah* (for shura and accounting), which must be elected by the *ummah* and representing her. Its mandatory powers will be as shown later on.
3. This means there will be an election for selecting the members of the councils of *wilayat*, and another election for the members of the council of the *ummah*.
4. To facilitate the election process and save the citizens of the repeated elections, we adopt the election of the councils of the *wilayat* first, then those who won in the councils of the *wilayat* would gather and elect from among themselves the council of the *ummah*. This means the councils of the *wilayat* would be directly elected by the *ummah*, while the council of the *ummah* would be elected by the councils of the *wilayat*, which means the beginning and end of the term of the council of the *ummah* is the same as the beginning and end of the term of the councils of the *wilayat*.
5. The one who is elected from the councils of the *wilayat* to the council of the *ummah* is replaced by the one of the highest votes among those who failed in the elections of the councils of the *wilayat*. A lot is cast between those who got the same votes.
6. The people of the *dhimmah* elect their representatives in the councils of the *wilayat*; and these representatives elect their representatives in the council of the *ummah*. All of this takes place at the same time of the election of the councils of the *wilayat* and the *council* of the *ummah* in the State.

Consequently, a law has been prepared that takes in consideration the mentioned matters, and explains the measures used for the election of the councils of the *wilayat* and the council of the *ummah*.

This law will be discussed and adopted at the right time inshallah.

Membership of the Council of the *Ummah*

Any person who holds the citizenship of the State, if he were mature and sane has the right to be a member of the Council of the *Ummah* and the right to elect the members of the Council, whether the person was a man or a woman. This is because the Council of the *Ummah* has no mandate to rule, and it does not come under the noble hadith that prevents the woman from becoming a ruler. It is rather within the subject of shura and accounting, which is right for both, the man and the woman. In the thirteenth year of the Messenger of Allah's (saw) prophethood, the year he emigrated, there came to the him (saw) seventy-five Muslims, among whom were two women, and they all gave him the second Bay'ah of Al-Aqaba, which was a Bay'ah of war and fighting and a political Bay'ah. Once they had all given their Bay'ah, he said to all of them:

«أخرجوا إليَّ منكم اثني عشر نقيباً يكونون على قومهم»

"Bring me twelve Chiefs (*Naqeebs*) from among you who would be responsible for themselves and their folk."

This is part of a long hadith reported by Ahmad through Ka'b ibn Malik; and it is an order from him addressed to everyone, to elect from all the present. He (saw) did not specify the men and nor did he exclude the women, neither in regard to who would select nor to who should be selected. The *Mutlaq* (unrestricted) rule should be taken as such, unless there is evidence that restricts it; and the *A'am* (general) rule should also be taken as such, unless there is evidence that specifies it. In this case the speech was unrestricted and general. No evidence of specification or restriction has been reported, which indicates that the Messenger of Allah (saw) ordered the two women to elect the ***Naqeebs***, and gave them the

right to be chosen as ***Naqeebs*** from among the Muslims.

The Messenger of Allah (saw) sat once to take the Bay'ah from the people, with Abu Bakr and 'Umar sitting with him, and both men and women gave him the Bay'ah. This Bay'ah was one on ruling and not on Islam, for the women were already Muslims. After the Bay'ah of the *Rudhwan* in Hudaybiyah the women gave him their Bay'ah too. Allah (swt) says:

يَاأَيُّهَا النَّبِيُّ إِذَا جَاءَكَ الْمُؤْمِنَاتُ يُبَايِعْنَكَ عَلَى أَنْ لاَ يُشْرِكْنَ بِاللَّهِ شَيْئًا وَلاَ يَسْرِقْنَ وَلاَ يَزْنِينَ وَلاَ يَقْتُلْنَ أَوْلاَدَهُنَّ وَلاَ يَأْتِينَ بِبُهْتَانٍ يَفْتَرِينَهُ بَيْنَ أَيْدِيهِنَّ وَأَرْجُلِهِنَّ وَلاَ يَعْصِينَكَ فِي مَعْرُوفٍ فَبَايِعْهُنَّ وَاسْتَغْفِرْ لَهُنَّ اللَّهَ إِنَّ اللَّهَ غَفُورٌ رَحِيمٌ

"O Prophet! When believing women come to you to take the oath that they will not associate in worshipping any other thing whatsoever with Allah, that they will not steal, that they will not commit adultery (or fornication) that they will not kill their children that they will not utter slander intentionally or in falsehood, and that they will not disobey you in any just matter, then do receive their oath, and pray to Allah for the forgiveness of their sins, for Allah is oft-forgiving, most merciful". .. [TMQ 60:12]

This Bay'ah was also a Bay'ah on ruling, as the Qur'an states that the women were believers, and the Bay'ah was that they would not disobey him in any good thing.

Besides, the woman has the right to represent and be represented in voicing an opinion. This is because she has the right to voice her opinion, so she can choose her representative; and moreover since the deputyship does not necessitate manhood, she has the right to represent those who elect her.

It was also proved that Umar (ra) would seek the opinion of the

Muslims when he faced a problem, whether it was related to the ahkam *shar'iah* or the ruling or any of the actions of the State. When a problem faced him he used to call the Muslims to the masjid, and he used to call the men and women, and seek the opinion of all of them. He withdrew his opinion when a woman opposed him regarding limitation of the mahr.

Non-Muslims have the right like the Muslims to be represented in the council of the *ummah*, and to be representatives of their electorate in it, so as to express the opinion on their behalf regarding the misapplication of the rules of Islam upon them, and the oppression of the ruler that might fall upon them.

However, non-Muslims will not be allowed to voice their opinion in matters related to legislation, because the Islamic legislation emanates from the Islamic *'Aqeeda*. It is a host of practical divine rules deduced from their elaborate evidences, which treat the human's problems according to a specific viewpoint outlined by the Islamic *'Aqeeda*. The non-Muslim embraces a doctrine that is alien and contradictory to the Islamic *Aqeeda*, and his viewpoint about life contradicts the Islamic viewpoint, so his opinion is not sought in matters of legislation.

The non-Muslim does not also have the right to elect the Khaleefah, nor to participate in the short listing of the candidates from whom the Khaleefah is to be elected, for he has no right in the ruling. As for other matters that form part of the *Ummah*'s Council mandatory powers, he is just like the Muslim in these matters and in voicing an opinion regarding them.

The length of term of the membership to the *Ummah*'s Council

The term of membership to the Council of the *Ummah* is limited. This is because Abu Bakr was not restricted to consult those to whom the Messenger of Allah (saw) used to refer. 'Umar Ibn al-

Khattab also was not under obligation to consult those whom Abu Bakr used to consult and in the latter years of his rule, 'Umar sought the opinions of persons other than those he had consulted in the first years of his ruling. This indicates that the membership to the Council of the *Ummah* has to be for a specific period. We adopt here the period to be five years.

The mandatory powers of the Council of the *Ummah*

The Council of the *Ummah* has the following mandatory powers and they are:

1. **(a):** The Khaleefah has to consult the Council and the Council has the right to advise him in the practical matters and actions related to discharging the affairs of the domestic policy that do not require profound thought and scrutiny such as provision of the necessary services so as to enjoy the tranquility in life in terms of the matters of ruling, education, health, economy, trading, industry, farming and the like, and also the like of their request of strengthening the defense of their cities, saving their security and driving the danger of their enemy. The opinion of the Council in these matters is binding for the Khaleefah, i.e. the opinion of the majority is executed.

   (b): In the intellectual matters that require profound thought and scrutiny, such as revealing the facts or taking the decision of war, the matters that require experience, information and knowledge, like putting military plans and all the technical and practical matters. All of such matters are taken from the specialists and not by majority. Similar to that are the finance, the army and foreign policy, which the Khaleefah has the right to decide in accordance with his opinion and ijtihad based on the ahkam *shar'iah*, and they are not within the mandatory power of the council. The Khaleefah has the right to refer to the Council for its consultation and acquaintance of its

opinion; however the opinion of the Council is not binding in these matters.

2. The opinion of the council is not sought regarding legislation; the legislation is rather taken from the Book of Allah, the Sunnah of His Messenger and from what they alluded to in terms of *ijma'*us-*sahabah* and the divine qiyas, through valid ijtihad. The adoption of the ahkam *shar'iah* and enacting of laws would take place in this way. The Khaleefah has the right to refer to the Council the laws and rules which he wants to adopt. The Muslim members of the Council have the right to debate them and voice their opinions regarding those rules. However, if they disagreed with the Khaleefah regarding the validity of their deduction or their evidence, in terms of their disagreement with the method of adoption from the divine foundations (*usool*) adopted in the State, then the decision will refer to *mahkamat ul-madhalim*, and its verdict in this matter is binding.

3. The Council of the *Ummah* reserves the right to hold the Khaleefah accountable on all matters that take place effectively within the State, whether these were related to home affairs, foreign affairs, financial affairs or military matters. The opinion of the Council is binding if the majority's opinion in such matter is binding, and it is not binding if the majority's opinion in such matter is not binding.

If the Council and the Khaleefah differed about the legitimacy of an action that had been already executed the matter should be referred to the court of *Madhalim* to settle the question. Its verdict on the matter is binding.

4. The Council of the *Ummah* reserves the right to express discontent towards the assistants, *Walis* or the '*Aamils*. Its opinion in such case would be binding and the Khaleefah should dismiss them at once. If the opinion of the council of the *ummah* differed with the opinion of the council of the concerned *wilayah* regarding

content and discontent of the *wali*s and *amil*s, the opinion of the council of the *wilayah* has the priority.

5. The Muslim members of the Council have the right to restrict the nomination of candidates for the Khilafah from amongst those decided by *mahkamat ul-madhalim* to fulfilling the contraction conditions, whether they were restricted in two or six nominees, as it is explained under the subject of the Khaleefah's election. Their opinion in such a matter is binding, and candidates other than those shortlisted by the Council should accordingly not be considered.

These are the mandatory powers of the Council of the *Ummah*. The evidences to these mandatory powers are as follows:

The first point, (a): The evidence to the fact that the opinion of the council of the *ummah* regarding the practical actions and matters, which do not require study and scrutiny is binding, is deduced from the Messenger of Allah's (saw) compliance with the opinion of the majority in going out of the Madinah to meet the army of the mushriks in battle of Uhud. This is despite the opinion of the Messenger of Allah (saw) and the *Sahabah* was to stay in the Madinah and not to go out of it. It is also taken from His (saw) saying to Abu Bakr and Umar (ra):

«لو اجتمعتما في مشورة ما خالفتكما»

"Had you agreed together on a consulted matter I would have not disagreed with you."

Therefore, the practical matters related to the opinion leading to an action, in terms of providing the services to the citizens for reassuring their life, and in terms of maintaining their security, strengthening their defenses and driving the danger away from them; the opinion of the majority of the council in all of these issues is binding upon the Khaleefah even if it disagreed with his

wish, as it happened with the Messenger of Allah (saw) going out to Uhud in compliance with the opinion of the majority.

The first point (b): In principle, the Khaleefah takes the opinion of the scholars and the experts and the specialists regarding the matters of this section. This is in accordance with what happened with the Messenger of Allah (saw) when he took the opinion of Al-Habab ibn Al-Mundhir, in selecting the location of the battle of Badr. It was reported in the Seerahh of ibn Hisham:

«إنه صلى الله عليه وسلم، حين نزل عند أدنى ماء من بدر، لم يرض الحباب بن المنذر بهذا المنزل، وقال للرسول: يا رسول الله، أرأيت هذا المنزل، أمنزلاً أنزلكه الله ليس لنا أن نتقدمه ولا نتأخر عنه، أم هو الرأي والحرب والمكيدة؟ قال: بل هو الرأي والحرب والمكيدة، فقال: يا رسول الله، فإن هذا ليس بمنزل، فانهض بالناس حتى نأتي أدنى ماء من القوم فننزله، ثم نغوّر ما وراءه من القُلُب، ثم نبني عليه حوضاً فنملؤه ماء، ثم نقاتل القوم فنشرب ولا يشربون، فقال رسول الله صلى الله عليه وسلم: لقد أشرت بالرأي، فنهض رسول الله صلى الله عليه وسلم ومن معه من الناس، فسار حتى أتى أدنى ماء من القوم نزل عليه، ثم أمر بالقُلُب فغُوّرت، وبنى حوضاً على القليب الذي نزل عليه، فملئ ماء، ثم قذفوا فيه الآنية»

"When the Messenger (saw) camped at the nearest side of the water of Badr, Al-Habab ibn Al-Mundhir was not content with that site. He said to the Messenger: O Messenger of Allah! Did Allah make you camp in this place where we can't depart from it, or is it the opinion, war and strategy?" He

(saw) said: "It is rather the opinion, war and strategy". Al-Habab ibn Al-Mundhir said: "O Messenger of Allah, this is not the (right) place. Move the people till we come to the side of the water near to the people (enemy), we camp there, then we seep away the water from the other part, we build a basin on top of it, we fill it with water. Then we fight against the people where we drink and they do not". The Messenger of Allah (saw) said: "You gave the (right) opinion". So the Messenger of Allah (saw) and the Muslims stood up and walked till they reached the near side of the water from the enemy and camped there. Then he (saw) ordered that the water be seeped away which was done. He (saw) built a basin on top of the seeped wells, filled it with water and threw in their (water) pots."

So the Messenger of Allah (saw) agreed with the opinion of al-Habab and followed it.

In this incident, which has to do with the opinion, war and strategy, the views of the people have no weight in taking the decision. Rather the view of the expert is what is considered. Similar to this are the technical matters and the thoughts which require study and scrutiny, together with the definitions. In all of such matters, reference is made to the experts and specialists, rather than to the ordinary people's opinion. There is no weight in such matters to the majority, but rather to the knowledge, experience and specialisation.

This also applies to the financial matters, because the *Shari'ah* has determined the types of funds which must be collected, and the areas over which they need to be allocated (spent). The *Shari'ah* has also determined the cases when taxes are imposed; therefore there is no point in seeking the opinion of the people in the collection and allocation of the funds. Similar to this is the army, the *Shari'ah* has left to the Khaleefah the right of managing the army's affairs, and it determined the rules of Jihad. There is no

validity in the opinion of the people over matters decided by the *Shari'ah*. This also applies to the relationship of the State with other States, because this is of the thought that requires study and deep insight and is related to Jihad. Furthermore it is a part of the opinion, war and strategy. Therefore, there is no point in the opinion of the people in this matter whether it is the majority or minority. However the Khaleefah is allowed to present these matters to the Council of the *Ummah* for its consultation and opinion, because such presentation is of the *Mubah*, and the opinion of the Council in these matters is not binding as in the incident of Badr. Rather the decision is entrusted to the concerned person.

To distinguish the difference between (a) and (b) of the first point, we say:

For deciding the building of a bridge over a river to serve the interests of the people in a village, almost isolated in terms of communications and the like, then the majority opinion of the council on this matter is binding to the Khaleefah in building the bridge to solve the communications problem of the village. As regarding deciding the right technical location for building the bridge, and the best engineering design of the bridge, whether it should be a suspension bridge or standing over pillars in the river, etc; the experts and specialized people are consulted in such matter, rather than the majority opinion of the council.

Likewise, building a school for the children of a village, where its children find great difficulty in reaching the schools in the towns, the opinion of the majority of the council of the *ummah* on this matter is binding to the Khaleefah. As regarding the choice of the location of the school in the village in terms of the soil strength suitable for the design, as well as the way of its building; besides of being possessed by the State, i.e. it is built, or bought or rather rented for one or two years, etc. In such matters the experts and specialized people are consulted; and the majority opinion of the

council is not sought, though the Khaleefah is allowed to consult with them over the matter, but their opinion is not binding.

As regarding a country at the frontiers, defying the danger of an enemy, then the majority opinion of the council of the *ummah* is binding in terms of the village's fortification and driving the danger of the enemy away from it, and preventing its exposure to killing and expulsion after any aggression from the enemy. However, the method of building such fortifications and any fighting means used to drive the danger away from it; all of such things need the consultation of experts and specialized people, rather than the majority opinion of the council.

The second point: Legislation belongs to Allah alone. Allah (swt) says:

﴿ إِنِ الْحُكْمُ إِلاَّ لِلَّهِ﴾

"Verily, the decision rests with Allah only." [TMQ 12: 40]

﴿ فَلاَ وَرَبِّكَ لاَ يُؤْمِنُونَ حَتَّى يُحَكِّمُوكَ فِيمَا شَجَرَ بَيْنَهُمْ ثُمَّ لاَ يَجِدُوا فِي أَنفُسِهِمْ حَرَجًا مِمَّا قَضَيْتَ وَيُسَلِّمُوا تَسْلِيمًا ﴾

"But nay, by your Lord, they will not be true believers until they make you judge of what is in dispute between them, and find within themselves no dislike of that which you decided and submit with full submission." [TMQ 4: 65]

In the explanation of the Messenger (saw) to His (swt) saying:

﴿ اتَّخَذُوا أَحْبَارَهُمْ وَرُهْبَانَهُمْ أَرْبَابًا مِنْ دُونِ اللَّهِ﴾

"They have taken as lords beside Allah their rabbis and their monks",

[TMQ 9:31]

Tirmidhi reported through Adiyy ibn Hatim, he said:

«أتيت النبي صلى الله عليه وسلم وفي عنقي صليب من ذهب، فقال: يا عدي اطرح عنك هذا الوثن. وسمعته يقرأ في سورة براءة [اتَّخَذُوا أَحْبَارَهُمْ وَرُهْبَانَهُمْ أَرْبَابًا مِنْ دُونِ اللَّهِ] قال: أَمَا إنهم لم يكونوا يعبدونهم، ولكنهم كانوا إذا أحلوا لهم شيئاً استحلوه، وإذا حرّموا عليهم شيئاً حرّموه»

"I came to the prophet (saw) while wearing a cross of gold in my neck. He said: O Adiyy! Throw out this idol. And I heard him reading in surah of Baraa'ah: *'They have taken as lords beside Allah their rabbis and their monks'* (9: 31)**. He said: As regarding they did not worship them; but when they allowed them something they took as halal and when they forbade them of something they prohibited it".**

Therefore, legislation is not taken from the opinion of the council, neither by consensus or majority. It is rather taken from the Book of Allah and the Sunnah of His Messenger, and from that which is indicated by them through valid ijtihad. Thus, the Messenger (saw) refused the opinion of many Muslims regarding the Hudaybiah peace treaty, and said:

« إني عبد الله ورسوله، ولن أخالف أمره »

"I am the servant of Allah and His Messenger, and will never disobey his order."

This is because the peace was a revelation from Allah (swt), therefore the opinion of the people is not sought regarding legislation. Based on that, the adoption of the ahkam *shar'i*ah,

enacting of laws and the adoption of the rules and cannons are of the mandatory powers of the Khaleefah alone as explained before. However, it is allowed for the Khaleefah to submit to the council of the *ummah* whatever he wants to adopt of ahkam *shar'i*yyah and cannons so as to find out its opinion regarding it. This is like what Umar ibn Al-Khattab (ra) did when he referred to the Muslims over the divine rules, which the *Sahabah* did not object to, as in the incident of the conquered lands of Iraq, when the Muslims asked him to divide the lands amongst the fighters who opened them. So Umar asked the people, but his opinion settled on keeping the land with its landlords on condition that they pay a known *Kharaj* over it in addition to paying the *Jizya* over their persons. The reference of Umar and Abu Bakr before him to the *Sahabah* for their opinion over the divine rules without an objection from the *Sahabah* to this indicates their *Ijma'*, evidence that the Khaleefah has the right to do that.

As regarding reference to the *mahkamat ul-madhalim* in case the Khaleefah differed with the council of the *ummah* regarding the validity of the deduction of these cannons, or regarding their evidence in terms of the adoption from the sources (*usool*) adopted by the State. In this case the authority of *Madhalim* judge is to examine the hukm adopted by the Khaleefah, whether it has divine evidence and whether the evidence applies to the incident. Therefore, if the Khaleefah differed with the council (i.e. the majority of the council) over the hukm which the Khaleefah adopted in terms of being a valid hukm *shar'i* or not, then this dispute is settled by the judge of *madhalim*, because it is of his specialty; and the opinion of *mahkamat ul-madhalim* is binding.

Non-Muslim members of the council have no right in examining the ahkam and cannons which the Khaleefah wants to adopt. This is because they do not believe in Islam, and because their right is to voice their opinion regarding any oppression might fall upon them from the rulers, rather than expressing their view regarding the divine ahkam and cannons.

With regards to the third point, its evidence is the general meaning of the texts related to bringing the rulers to task. Ahmad narrated from Ibn Umar, who said**:** "The Messenger of Allah (saw) said**:**

« سيكون عليكم أمراء يأمرونكم بما لا يفعلون، فمن صدقهم بكذبهم،

وأعانهم على ظلمهم، فليس مني ولست منه، ولن يَرِدَ عليّ الحوض »

"There will be *Ameers* over you who order you of things they do not do. Whoever believed them in their lies and helped them in their injustice he would not belong to me nor I belong to him, and he will not join me on the *Hawdh* (basin)"."

Narrated from Abu S'aid al-Khudri, who said:

"The Messenger of Allah (saw) said**:**

«...أفضل الجهاد كلمة حق عند سلطان جائر »

"…The best of Jihad is (to say) a word of truth before an oppressor ruler"."

Al-Haakim narrated from Jabir from the Prophet (saw) who said:

« سيد الشهداء حمزة بن عبد المطلب، ورجل قام إلى إمام جائر فأمره

ونهاه فقتله »

"The master of martyrs is Hamza ibn Abdul-Muttalib and a man who stood to an oppressor ruler where he ordered him

and forbade him so he (the ruler) killed him."

Muslim narrated from Umm Salamah that the Messenger of Allah (saw) said: "There will be *Ameer*s you recognise some of what they do and deny some. Whoever recognised he would be free of responsibility, and whoever denied he will be safe; but whoever accepted and followed (he will be not)" These texts are in general form and indicate of accounting the ruler in accordance with the rules of *shar'*., and accounting must be over any action. This accounting by the Council to the Khaleefah and other assistants, governors and *A'amils* would be over any action which has been actually executed whether this action disagreed with the divine rule, was wrong or harmful to Muslims, or was unjust or complacent toward the citizens in looking after their affairs. The Khaleefah must respond to this accounting and the objections by showing his view and evidence regarding his words, actions and tasks he undertook so that the Council can be assured of the good performance, the sincerity and honesty of the Khaleefah. If however the Council does not accept the view of the Khaleefah and rejects his argument, this must be examined. If this matter was of the issues over which the majority opinion is binding then the opinion of the Council is binding like the issues in (a), otherwise it would not be like the issues in (b). If the accounting for example was regarding not providing the school in the previous example then the accounting is binding. If the accounting was however regarding the design he chose for the school then his accounting is not binding.

If those who account differed with the rulers over any matter from the legal point of view, the matter is referred to the court of unjust acts (*Al-Madhalim*) by a request from the Council, due to what Allah (swt) says:

﴿ يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُوْلِي الأَمْرِ مِنْكُمْ فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ ﴾

"O you who believe obey Allah and obey the Messenger and those in authority from amongst you. If you disputed over a matter refer it to Allah and the Messenger." [TMQ 4:59]

This means that if the Muslims dispute with the people of authority over a matter, they should refer it to Allah and to the Messenger, that is arbitrate to the *Shari'ah*. This means to refer to the Judiciary, that is to the court of unjust acts and its opinion is binding, because it has the mandatory power in this case.

As regarding the fourth point, its evidence is that the Messenger of Allah (saw) removed al-'Ala'a ibn al-Hadhrami, his *A'amil* over Bahrain, because the delegate of Abd Qays complained about him to the Messenger (saw). Ibn Sa'ad narrated on the authority of Mohammed ibn Umar:

«أن رسول الله صلى الله عليه وسلم قد كتب إلى العلاء بن الحضرمي أن يقدم عليه بعشرين رجلاً من عبد القيس، فقدم عليه بعشرين رجلاً رأسهم عبد الله بن عوف الأشجّ، واستخلف العلاء على البحرين المنذر بن ساوى، فشكا الوفد العلاء بن الحضرمي، فعزله رسول الله صلى الله عليه وسلم وولّى أبان بن سعيد بن العاص، وقال له استوصِ بعبد القيس خيراً، وأكرم سراتهم»

"That the Messenger of Allah wrote to al-Ala'a ibn Al-Hadhrami to come to him with twenty men from Abd Qays. He reached him with twenty men headed by Abdullah ibn Awf al-Ashajj, and appointed after him al-Mundhir ibn Sawa. The delegate complained of al-Ala'a ibn Al-Hadhrami so the Messenger of Allah (saw) removed him and appointed Iban ibn Sa'id ibn Al-A'ass and said to him:" Take care of Abd Al-

Qays and respect their chiefs"."

Also Umar ibn Al-Khattab removed Sa'ad ibn Abi Waqqas from the *Wilayah* just because of the complaint of the people against him, and he said: "I did not remove him because of deficiency or treason", This indicates that the people of the *Wilayah* have the right to express their anger and discontent of their *Walis* and *Ameer*s, and the Khaleefah thus has to remove them. Likewise, the Council of the *Ummah* is allowed, as a representative of all Muslims in the State, to express its anger and discontent of the *Walis* and *A'amils* and the Khaleefah has to remove them immediately if the complain came from the majority of the council of the wilayah or the majority of the council of the *ummah*. In case of conflict between the views of these two councils, then the priority is given to the council of the wilayah, for it is more aware and more acquainted than the council of the *ummah* of the condition of the *wali*.

With regards to the fifth point, this point has two issues:
The first one is the shortlisting of the nominees, and the second is making the shortlist made of six and then of two.

As for the first issue, from following the manner of appointing the guided Khulafa'a it appears there was shortlisting of nominees made by the representatives of the Muslims directly, or through requesting the Khaleefah to shortlist the nominees on their behalf.

In the hall of Bani Saa'ida, the nominees were Abu Bakr, Umar, Abu Ubayda and Sa'ad ibn Ubada, who were seen enough, where nomination was restricted to them. This took place before the people of the hall, and then by the consent of the Sahaba later on, where they gave the bay'ah to Abu Bakr.

Towards the end of Abu Bakr's (ra) authority, he consulted with Muslims for about three months, discussing with them the post of Khilafah after him. After they discussed this with him they agreed

to his nomination of Umar, i.e. restricting the nomination in one candidate.

Restricting of nominees was more clear and obvious after the stabbing of Umar; for they requested him (ra) to nominate to them candidates; so he appointed it in six (nominees), depriving others of it, where he emphasised that matter as it is known.

At the time of nominating Ali (ra), he was the only nominee, without having any one else with him; so there was no need for shortlisting.

Shortlisting of nominees used to take place before a gathering of Muslims; a matter which is opposed and not executed had it been not allowed, for this prevents the right of others in nomination. Therefore, shortlisting the nominees to Khilafah post is allowed due to the *ijma'* us-*Sahabah*. Thus, the *ummah*, i.e. her representatives are allowed to shortlist the nominees, whether this shortlisting was conducted directly by the *ummah*, or through authorizing the outgoing Khaleefah to do that on their behalf.

This is with regards to shortlisting. As regarding the fact that shortlisting the nominees in six people at first, this takes account of the action of Umar (ra); whilst shortening the list to two after that, this takes account of the action of Abdur Rahman ibn Awf (ra). Besides, this verifies the meaning of the bay'ah by the majority of the Muslim electorate; for if the nominees were more than two, then the winner amongst them might get for example thirty percent of the electorate, i.e. less than their majority (i.e. less than fifty percent). The winner would get the majority in case the nominees were not more than two.

As regarding the fact that the shortlisting of the six and two nominees by the council of the *ummah* must be of those decided by *mahkamat ul-madhalim* to have fulfilled the contraction conditions, this is because the shortlisting conducted by the council of the

ummah is for electing a Khaleefah from amongst them. It means in other words that they must fulfil the contraction conditions. Therefore, *mahkamat ul-madhalim* would exclude from the nominees to the Khilafah every one who does not fulfil the contraction conditions. After that the council of the *ummah* would make the shortlist from the nominees decided by *mahkamat ul-madhalim* to have fulfilled the contracting conditions.

The Right of expression and voicing an opinion without any impediment

Every member of the Council of the *Ummah* has the right to speak and voice an opinion as he wishes without any pressure and within the limits allowed by *Shar'*. The member would be a representative of the Muslims in terms of voicing opinions and in accounting. His job would be to study closely the activities of the Khaleefah or any ruler in the State or any civil servant in any of the State's departments and offices and hold all of them accountable, giving them advice, voicing opinions and presenting suggestions, and entering with them in debates, together with objecting to all of the wrong actions performed by the State. He would do all this on behalf of the Muslims who are obliged to enjoin what is good and forbid what is evil, and to hold the rulers accountable, giving them advice and suggestions, because this is their duty upon the Muslims. Allah (swt) says:

﴿كُنْتُمْ خَيْرَ أُمَّةٍ أُخْرِجَتْ لِلنَّاسِ تَأْمُرُونَ بِالْمَعْرُوفِ وَتَنْهَوْنَ عَنْ الْمُنكَرِ﴾

"You are the best of peoples, evolved for mankind, enjoining what is right and forbidding what is wrong". .. [TMQ 3:110]

And He (swt) says:

الَّذِينَ إِنْ مَكَّنَّاهُمْ فِي الأَرْضِ أَقَامُوا الصَّلاَةَ وَآتَوْا الزَّكَاةَ وَأَمَرُوا بِالْمَعْرُوفِ وَنَهَوْا عَنْ الْمُنْكَرِ

"They are those who, if we establish them in the land, establish regular prayers and give zakat, enjoin the right and forbid the wrong". .. [TMQ 22:41]

Allah (swt) also says:

﴿وَلْتَكُنْ مِنْكُمْ أُمَّةٌ يَدْعُونَ إِلَى الْخَيْرِ وَيَأْمُرُونَ بِالْمَعْرُوفِ وَيَنْهَوْنَ عَنْ الْمُنْكَرِ﴾

"And let there arise from amongst you a band of people inviting to all that is good, enjoins what is right and forbidding what is wrong" [TMQ 3:104]

Many *Ahadith* have been reported that indicate the obligation of enjoining the *Ma'aruf* and forbidding the *Munkar*, such as Prophet Muhammad's (saw) saying:

« والذي نفسي بيده، لتأمرنَّ بالمعروف، ولتنهونّ عن المنكر، أو ليوشكنَّ الله أن يبعث عليكم عقاباً من عنده، ثمّ لتدعنّه فلا يستجيب لكم »

"By He Who owns my soul, you must enjoin the *Ma'aruf* and forbid the *Munkar*, or Allah may inflict upon you a punishment from Him, you would then supplicate Him and your supplication would go unanswered", as narrated by Ahmad on the authority of Hudhayfah.

He (saw) also said**:**

« من رأى منكم منكراً فليغيره بيده، فإن لم يستطع فبلسانه، فإن لم يستطع فبقلبه وذلك أضعف الإيمان »

"If anyone among you sees a *Munkar*, let him change it with his hand; if he could not, let him then change it with his tongue; and if he could not, then with his heart., And that is the least of *Iman*", narrated by Muslim on the authority of Abu Sa'id.

These verses and *Ahadith* command the Muslims to enjoin the *Ma'aruf* and forbid the *Munkar*. Holding the rulers accountable is part of enjoining of the *Ma'aruf* and forbidding of the *Munkar*. Some *Ahadith* in fact specifically order the holding of the rulers accountable, this highlights the importance of such a duty. Umm 'Atiyya reported on the authority of Abu Sa'id that the Messenger of Allah (saw) said:

« أفضل الجهاد كلمة حق عند سلطان جائر »

"The best of Jihad is a word of truth before a tyrant ruler." [Ahmad, Hakim]

This is a text regarding the censure of the ruler and the obligation of uttering the word of truth in his face, considering it as the best form of Jihad. Allah's Messenger (saw) exhorted this type of Jihad and made it very desirable even if it led to the loss of life, as mentioned in the sound (*Sahih*) *hadith*, he (saw) said:

« سيد الشهداء حمزة بن عبد المطلب، ورجل قام إلى إمام جائر فأمره ونهاه فقتله »

"The master of martyrs is Hamza, and a man who stood up to a tyrant ruler to advise him, and was killed." [Hakim, Tabarani]

When the *Sahabah*, May Allah be pleased with them, strongly opposed the Messenger of Allah (saw) regarding the Hudaybiyah peace treaty, he did not censure them over their opposition; he rather rejected their view and concluded the peace treaty. This is because his action was revelation from Allah (swt); where there is no weight to the view of the people in such case. His rebuke to them was because they did not obey him when he ordered them to slaughter the consecrated camels, and to shave their heads, and break off their consecration. The Messenger of Allah (saw) did not rebuke al-Habab ibn Mundhir in the battle of Badr when he disagreed with the location he camped in; he rather followed his opinion.

The Messenger (saw) went also along with the opinion of the majority who suggested that they should confront Quraysh outside Madina, despite the fact that he (saw) saw otherwise. In all such events, the Messenger (saw) would listen to their objection and answer them back.

The *Sahabah* (ra) had also taken the Khulafa'a *rashidoon* (ra) after the Messenger (saw) to task; and they did not rebuke them. They had held 'Umar accountable while he was standing on the pulpit because of the way he divided the Yemeni cloaks. A woman challenged him because he forbade the increase of the dowries; and the *Sahabah* also objected to his refusal to divide the lands of 'Iraq after its conquest and took him to task. Bilal and Al-Zubayr were harsh in their objection to him. He used to debate with them and consult other *Sahabah* until he convinced them of his opinion.

Therefore, any member of the Council of the *Ummah*, as a representative of the Muslims at large, has the right to speak in the

Council as he pleases, and to voice his opinion as he wishes, without any hindrance or pressure. He has the right to hold the Khaleefah accountable, as well as the *Mu'awin*, the *Wali* and any civil servant. They are obliged to answer him as long as he is abiding by the rules of *Shar'* in conducting the accounting and voicing his opinion.

The non-Muslim members of the council of the *ummah* have also the right in voicing their opinion regarding any oppression that might fall upon them from the rulers, without being prevented or feeling of impediment as long as they remained within the bounds of *Shar'* in their voicing of their opinions.

The Flags And Banners Of The State

The State has flags (*Alwiyah*) and banners (*Rayaat*) as deduced from the flags and banners of the first Islamic State, which the Messenger of Allah (saw) established in al-Madina al-Munawwara. These will be as follows:

1- Flag and banner, are linguistically called 'alam. Al-Qamoos al-Muheet mentions under the root (rawiya) that al-raya is al-'alam, plural is rayaat. It mentions under the root (lawiya) that al-liwaa' is al-'alam, plural alwiyah

Besides; *Shar'* gave each one of these terms a *Shar'ee* meaning as follows:

- The flag (liwaa') is white, on which it is written 'la ilaha illa Allah, Muhammad Rasool ullah' with black script. It is tied to the ameer of army or the leader of the army. It is used as a sign to his location, and it goes along with this location. The evidence for tying the flag to the *ameer* of the army is (that the prophet (saw) entered Makkah on the day of its conquest while raising a white flag). This was narrated by Ibn Mjah through Jabir. An-Nasaa'i also narrated through Anas (that when the prophet (saw) appointed Usama ibn Zayd as *ameer* to the army for invading the Romans, he tied his flag with his own hands).
- The banner (rayah) is black, on which it is written 'la ilaha illa Allah, Muhammad Rasool ullah' with white script. It is carried by the leaders of the army divisions (regiments, detachments, and other army units). The evidence is that the Messenger (saw), while being the leader of the army in Khayber, he said:

«لأعطين الراية غداً رجلاً يحب الله ورسوله، ويحبه الله ورسوله، فأعطاهـــا عليا»

"I will give the Raya tomorrow to a man who loves Allah and His Messenger, and Allah and His messenger love him; and he gave it to Ali".

This hadith is agreed upon. Ali (ra) was considered then the leader of a division or a regiment in the army. Al-Harith ibn Hassaan ibn Al-Bakri also said in the hadith: "We came to Medina and we saw the Prophet (saw) on the pulpit *(mimbar)*, with Bilal standing in front of him wearing his sword, and there were black banners in front of the Messenger (saw). I asked 'what are these banners?' They said: 'It is 'Amr ibn 'Al-'Aas who has just arrived from an expedition'". "And there were black banners (rayaat)" means there were many banners carried by the army though its *ameer* was one, which is Amru ibn Al-Ass. This indicates there is one flag (liwaa') in the same army, but the banners (rayaat) are many in each army.

Thus, the flag (liwaa') is a sign ("alam) to the *ameer* of the army only, while the banners (rayaat) are signs (a'laam) carried by the soldiers.

2. The flag (liwaa') is tied to the *ameer* of the army, and it is a sign indicating the headquarters of the *ameer* of the army. However, in the battle field, the leader of the battle, whether he was the *ameer* of the army or appointed by him, he is given the banner (raya) to carry it during the fight in the battle field. Therefore, the banner is called the mother of the war because it is carried by the battle leader in the battle field.

Therefore, at the time of actual war there will be one banner with every leader of a battalion, a matter that was familiar at that time. Keeping the banner flying up was evidence to the might of the leader of the battle. This is an administrative order that is followed in accordance with the traditions of fight in the armies.

The Messenger of Allah (saw) said announcing to the people the death of Zayd, Ja'far and Ibn Ruwaha before the soldiers brought the news:

« أخذ الراية زيد فأصيب، ثم أخذ جعفر فأصيب، ثم أخذ ابن رواحة فأصيب »

"Zayd took the banner (raya) but he was hit; and then Ja'far took it and he was hit; and then Ibn Ruwaha took it and he was hit" [Bukhari, Ahmad, Bayhaqi]

At the time of actual war, if the leader of the army in the battle field was the Khaleefah, the flag (liwaa') and not the banner (raya) only is also allowed to be lifted in the battle. It was reported in the Seerah of Ibn Hisham during the talk about the great war of badr that the flag and banner were present in the battle.

However, at the time of peace or after the end of the battle the banners are usually spread in the army lifted by its divisions, regiments, units and battalions, as it came in the hadith of Al-Harith ibn Hassan Al-Bakri that talked about the army of Amru ibn Al-Ass.

3. The Khaleefah is the army leader in Islam; therefore the flag is legally lifted on top of his headquarter, i.e. on top of the Khilafah house. This is because the flag it tied to the *ameer* of the army. The banner is allowed to be lifted on top of the Khilafah house from an administrative point of view, taking in account the fact that the Khaleefah is the head of the organisations of the State. As regarding the remaining organisations, departments and establishments of the State, the banner alone is lifted on top of them, because the flag is specific to the leader of the army as a mark to his site.

4. The flag is tied at the end of the spear and twisted around it. It is given to the leader of the army in accordance of the number of armies. Thus it is tied to the leader of the first army, the second army, or the leader of Ash-Sham army, and Iraq army, or the leader of Aleppo army, or the leader of Beirut army, and so on.

In origin it is twisted at the end of the spear and not spread out except at time of need. It is for example spread out on top of the Khilafah house because of its importance. This applies also to the sites of the leaders of the armies at the time of peace so that the *ummah* can see the greatness of the flags of their armies. However, if this need conflicted with the security issue, such as it is feared the enemy might recognise the sites of the leaders of the armies, then the flag will be treated as in origin, i.e. it is not spread out rather remains twisted.

As regarding the banner it is left for the wind to flap it like the flags used nowadays; therefore it is placed on top of the departments of the State.

In summary:

1. Regarding the army

A. In case of actual war, the flag remains attached to the site of the leader of the army. In origin it must not be spread out, rather kept rounded/twisted around the spear. It can be spread out after studying the security issue. There will be a banner carried by the leader of the battle in the battle field. In case the Khaleefah was in the battle field the flag is also allowed to be carried.

B. In case of peace the flag is tied to the leaders of the armies, and it is rounded around the spear; but it can be spread out on top of the sites of the leaders of the armies. Banners are usually spread in the army carried by its divisions, units, regiments and battalions. It is possible for each division, a regiment, or a battalion to have a specific banner that distinguishes it administratively and which is lifted with the banner.

2. Regarding the security organisations, departments, and

establishments of the State, only the banner is lifted on top of each of them except the house of Khilafah, where the flag is lifted on top of it as the Khaleefah is the leader of the army. The banner is allowed to be lifted administratively together with it, because the house of the Khilafah is the head of the organisations of the State. The private establishments and ordinary people can also carry and lift the banner on top of their establishments and offices and houses, particularly at the occasions of eids and victories and the likes.

The Anthem Of The Khilafah State

Adopting a anthem that can be acclaimed to distinguish a certain group of people from others, or a certain state from others is one of the allowed matters. Muslims used a slogan which they shouted when they met other states in battle field. This was during the time of the Messenger of Allah (saw) and by his agreement. They took the slogan of (Ha meem, they are not helped) in the battle of the trench and Qurayza, and the slogan of (You, the helped, bring death, bring death) in Bani Al-Mustaliq, and so on.

This is besides the favours bestowed by Allah (swt) upon man of the characteristics created in him such as hearing, sight and speaking, all of these are included in the evidences of permissibility. So, man looks, speaks and applauds at whatever he wants unless there is specific evidence related to any of them, which then has to be observed.

Therefore, it is allowed to the Islamic State to adopt a slogan with which it applauds and which distinguishes it from other states, where it uses it in its relations with other states, and it accompanies the Khaleefah in his visits to other heads of states or during their visits to him. It can also be used by the public in their occasions, where they applaud with it in their assemblies, public gatherings, schools and broadcasts, and the like.

As regarding the way of applauding, i.e. the voice intensity or lowering, or speaking with or without a nasal sound, etc; all of this is allowed, because Muslims used to declaim their poems with an exiting voice in accordance with the occasion they applaud it.

The state has adopted it should have an anthem, which it uses when necessary, and it accompanies the Khaleefah in his official meetings with the heads of the states. Besides, the ummah would use it at certain occasions. The following has been noticed in the anthem of the second guided Khilafah after its establishment by the permission of Allah:

1. It mentions the fulfillment of the good tidings of the Messenger of Allah (saw) regarding the return of the second guided Khilafah, and the rise again of the banner of the Uqab, the banner of the Messenger of Allah (saw).

2. It mentions the good tidings of the Messenger of Allah (saw) that when the Khilafah is established the earth will bring out its treasures and the heaven will send down its blessings, and the earth will be filled with justice after being filled with tyranny.

3. It mentions the conquest and spreading goodness in the world regions after the Muslim lands have become within the domain of the Khilafah, particularly the three mosques to which journeys are made: al-Masjid ul Haraam, the prophetic masjid, and al-Masjid ul-Aqsa after uprooting the entity of the Jews.

4. It will be concluded by the return of the ummah as Allah wanted her to be: The best ummah brought to mankind, where its main goal is to attain the fine pleasure of Allah (swt), Who would honour her with His favour, mercy and the High Garden of Al-Firdaus.

5. Takbeer has to be repeated in it. This is because takbeer has a special impact in Islam and in Muslims' life. It is takbeer that reiterates in their victories, and in their holidays, and their tongues mention it in every effective occasion.

In light of the mentioned points, the appendix of this book will contain the targeted anthem and its method; it will be announced at the right time, by the will of Allah.

وأخر دعوانا أن الحمد لله رب العالمين

Our last call is to celebrate the good praise of Allah, the Lord of the worlds.